ADMINISTRATION OF COMPANY LAW

QUESTION 1 — 2022

What is Winding Up? State the Various Modes of Winding Up.

1. Introduction

Winding up is the legal process by which the affairs of a company are brought to an end.

During winding up:

- the company's assets are collected and realised;
- its liabilities and debts are determined and paid;
- surplus, if any, is distributed according to law; and
- ultimately, the company is dissolved.

Therefore:

Winding up is the process by which the life of a company is brought to an end by collecting its assets, paying its liabilities and distributing the remaining surplus, followed by dissolution.

Important distinction

Winding up ≠ Dissolution

Winding up is the process.

Dissolution is the final legal termination of the company's existence.

Under Section 302, after the affairs of a company have been completely wound up, the Company Liquidator applies to the Tribunal for dissolution, and the Tribunal passes the dissolution order.

2. Object of Winding Up

The main objects are:

1. To bring the company's business to an end.
2. To collect and realise company assets.
3. To ascertain and pay the company's debts.
4. To protect the interests of creditors.
5. To distribute surplus assets among persons entitled to them.
6. To ultimately dissolve the company.

3. Statutory Framework

The present Companies Act, 2013 contains Chapter XX — Winding Up, principally Sections 270–303.

Important provisions include:

Section	Subject
270	Winding up by Tribunal
271	Circumstances for winding up by Tribunal
272	Petition for winding up
273	Powers of Tribunal
275	Company Liquidator

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Section	Subject
278	Effect of winding-up order
279	Stay of suits
280	Jurisdiction of Tribunal
281	Liquidator's report
285	List of contributories
290	Powers and duties of Company Liquidator
302	Dissolution of company

4. Modes of Winding Up

For examination purposes, it is useful to explain the traditional classification first and then state the current legal position.

Traditionally, winding up was classified into:

1. Compulsory winding up / winding up by the Tribunal
2. Voluntary winding up

However, after the Insolvency and Bankruptcy Code, 2016, the Companies Act's voluntary winding-up provisions were omitted. Voluntary liquidation is now dealt with under Section 59 of the IBC.

5. Winding Up by Tribunal

This is governed by Part I of Chapter XX of the Companies Act, 2013.

Section 270 states that the provisions of Part I apply to winding up of a company by the Tribunal.

The National Company Law Tribunal (NCLT) is the Tribunal exercising jurisdiction under these provisions.

6. Grounds for Winding Up by Tribunal — Section 271

A company may be wound up by the Tribunal on a petition under Section 272 in the following circumstances.

A. Special Resolution

Where the company has, by special resolution, resolved that it should be wound up by the Tribunal.

This is different from the old concept of voluntary winding up; the actual winding-up order is made by the Tribunal.

B. Acts Against Sovereignty and Integrity of India

Where the company has acted against:

- sovereignty and integrity of India;
- security of the State;
- friendly relations with foreign States;
- public order;
- decency; or
- morality.

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C. Fraudulent Conduct

Where the affairs of the company have been conducted in a fraudulent manner, or:

- the company was formed for a fraudulent or unlawful purpose; or
- persons concerned in its formation or management have been guilty of fraud, misfeasance or misconduct,

and the Tribunal considers it appropriate to wind up the company.

D. Failure to File Financial Statements or Annual Returns

Where the company has defaulted in filing its:

- financial statements; or
- annual returns

with the Registrar for the immediately preceding five consecutive financial years.

This is an important point to remember for the examination.

E. Just and Equitable Ground

Where the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

This is a broad equitable ground.

However, the Tribunal may refuse winding up where another appropriate remedy is available and the petitioner is acting unreasonably in seeking winding up instead of pursuing that remedy.

7. Who Can Present a Winding-Up Petition?

Under Section 272, a petition may be presented by:

1. the company;
2. any contributory or contributories;
3. the company and contributory/contributories jointly;
4. the Registrar;
5. a person authorised by the Central Government; or
6. the Central or State Government in cases involving the specified ground relating to sovereignty, integrity, security, foreign relations, public order, decency or morality.

8. Voluntary Liquidation — Present Law

This is an important current-law correction to older textbook answers.

The old Companies Act provisions relating to voluntary winding up were omitted after the enactment of the Insolvency and Bankruptcy Code, 2016.

Today, a corporate person can undertake voluntary liquidation under Section 59 of the IBC where the statutory conditions are satisfied.

Basic requirements

A declaration is made by the required majority of directors stating, among other things, that:

- the corporate person has no debt or can pay its debts in full from the proceeds of assets; and
- the liquidation is not being initiated to defraud any person.

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This is followed by the required members' resolution and appointment of an insolvency professional as liquidator. Where debt exists, creditor approval as prescribed by Section 59 is also required.

9. Winding Up vs Voluntary Liquidation

Winding Up by Tribunal	Voluntary Liquidation
Companies Act, 2013	IBC, 2016
Tribunal-driven	Initiated voluntarily by corporate person
Section 270 onwards	Section 59
NCLT passes winding-up order	Members initiate process subject to statutory conditions
Company Liquidator under Companies Act framework	Insolvency professional as liquidator

10. Winding Up vs Dissolution

This distinction is very important.

Winding Up

It is a process involving:

Assets → Realisation → Debts → Distribution

Dissolution

It is the final stage when the company legally ceases to exist.

Simple formula:

Winding Up = Process

Dissolution = End

Section 302 provides for dissolution by the Tribunal after the company's affairs have been completely wound up.

11. Effects of Winding Up

Once a winding-up order is made:

1. Company's affairs are placed under the winding-up process.
2. Liquidator takes control of the liquidation process.
3. Company assets are collected and realised.
4. Claims of creditors are dealt with according to the applicable statutory scheme.
5. Contributories may become liable to contribute where required by law.
6. Ultimately, the company is dissolved.

The Companies Act separately provides for the effect of a winding-up order under Section 278 and stay of suits under Section 279.

12. Role of the Liquidator

A liquidator is appointed to conduct the winding-up process.

His functions broadly include:

- taking custody/control of company property;
- collecting and realising assets;

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- examining claims;
- settling liabilities;
- maintaining accounts;
- distributing assets according to law;
- submitting reports to the Tribunal;
- taking steps towards dissolution.

The Companies Act specifically provides for the appointment of the Company Liquidator under Section 275 and his powers and duties under Section 290.

13. Important Case Law

⭐ 1. Hind Overseas Pvt. Ltd. v. Raghunath Prasad Jhunjhunwalla

The Supreme Court discussed the "just and equitable" ground and emphasised that winding up is not to be ordered merely because disputes exist between shareholders.

The court should consider whether another appropriate remedy exists.

⭐ 2. Yenidje Tobacco Co. Ltd., Re

An important English case concerning the just and equitable ground, particularly breakdown of the relationship between participants in a quasi-partnership company.

For an LL.M. answer, mentioning Hind Overseas is particularly useful.

14. Exam Flow Chart

COMPANY

↓

Need to terminate business

↓

Winding Up

↓

Tribunal Winding Up — Companies Act, 2013

OR

Voluntary Liquidation — IBC, 2016

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Liquidator

↓

Collect Assets

↓

Pay/settle Liabilities

↓

Distribute Surplus

↓

Dissolution

↓

Company ceases to exist

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15. Important Current-Law Note for Your Exam

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Because your paper is from 2022, some older textbooks may still describe:
“Compulsory winding up + voluntary winding up under the Companies Act.”
For your LL.M. answer, you can safely write:
“Historically, winding up was classified into compulsory and voluntary winding up. Following the Insolvency and Bankruptcy Code, 2016, the voluntary winding-up provisions of the Companies Act, 2013 were omitted, and voluntary liquidation of a corporate person is now governed by Section 59 of the IBC. Winding up by the Tribunal continues under Chapter XX of the Companies Act, 2013.”
That shows the examiner that you know the current legal position, while still answering the terminology used in the question paper.
16. Conclusion
Winding up is the statutory process by which the affairs of a company are brought to an end through realisation of assets, settlement of liabilities and eventual dissolution.
Under the present law, winding up by the Tribunal is governed by Chapter XX of the Companies Act, 2013, while voluntary liquidation is governed by Section 59 of the Insolvency and Bankruptcy Code, 2016. The Tribunal may order winding up on the statutory grounds contained in Section 271, including fraud, persistent filing defaults, specified threats to public interests and the just-and-equitable ground.
⭐ Best 15-mark conclusion
“Winding up is not itself the death of the company but the legal process preceding its dissolution. It ensures an orderly realisation of corporate assets, settlement of liabilities and distribution of any remaining assets in accordance with law.”
🔥 Memorise these for Q1
Section 270 → Winding up by Tribunal
Section 271 → Grounds
Section 272 → Petition
Section 275 → Company Liquidator
Section 278 → Effect of winding-up order
Section 290 → Liquidator's powers/duties
Section 302 → Dissolution
IBC Section 59 → Voluntary liquidation
Next: 2022 Q2 — “What are the consequences of an order of winding up? State the nature and extent of liability of a contributory.”

QUESTION 2 — APRIL 2022

What are the Consequences of an Order of Winding Up? State the Nature and Extent of Liability of a Contributory.

1. Introduction

A winding-up order is an order by which the Tribunal directs that the affairs of the company be wound up. After the order, the company enters the liquidation stage, its assets are realised, liabilities are settled according to law, and ultimately the company is dissolved.

The principal provisions are found in **Sections 273, 278, 279, 280, 281, 285 and 290 of the Companies Act, 2013**.

PART I — CONSEQUENCES OF A WINDING-UP ORDER

2. Effect of Winding-Up Order — Section 278

Section **278** deals with the effect of a winding-up order.

The order operates in favour of all creditors and contributories as if it had been made on a joint petition of the creditors and contributories.

This ensures that the liquidation is conducted for the collective benefit of persons having claims against or interests in the company.

3. Company Liquidator Takes Over

Following the winding-up order, the **Company Liquidator** undertakes the statutory functions necessary for liquidation.

He takes steps to:

- take custody/control of company assets;
- identify and realise assets;
- investigate claims;
- settle liabilities;
- distribute assets according to law;
- complete the winding-up process.

The liquidator's powers and duties are principally dealt with in **Section 290**.

4. Stay of Suits and Proceedings — Section 279

After a winding-up order, or appointment of a provisional liquidator, no suit or other legal proceeding shall be commenced by or against the company except with the leave of the Tribunal and subject to such terms as the Tribunal may impose.

Proceedings pending against the company are also subject to the statutory requirements.

Purpose

This prevents individual creditors from proceeding independently and disturbing the orderly liquidation process.

5. Tribunal's Jurisdiction — Section 280

The Tribunal has jurisdiction to entertain or dispose of:

- suits and proceedings by or against the company;
- claims made by or against the company;
- questions of priorities;

- matters relating to winding up.

Thus, the Tribunal exercises comprehensive jurisdiction over the winding-up process.

6. Liquidator's Report

Under **Section 281**, the Company Liquidator is required to prepare a report regarding the affairs of the company.

The report may contain information concerning:

- assets;
- liabilities;
- capital structure;
- creditors;
- contributories;
- contracts;
- examination of the company's affairs;
- other relevant matters.

The report assists the Tribunal in supervising the liquidation.

7. Company Cannot Continue Ordinary Business

After a winding-up order, the company's business does not continue as an ordinary going concern except to the extent necessary for the beneficial winding up of the company.

The liquidator may continue such activities as are necessary for advantageous realisation of the company's assets.

8. Directors' Powers Are Restricted

The directors do not continue to exercise unrestricted control over the company's affairs.

The liquidator takes charge of the liquidation process, subject to the supervision and control of the Tribunal and the Companies Act.

9. Assets Are Realised

The company's assets are collected and realised by the liquidator.

These may include:

- land and buildings;
- machinery;
- investments;
- inventory;
- receivables;
- intellectual property;
- other corporate assets.

The proceeds are applied according to the applicable statutory priority.

10. Claims of Creditors Are Settled

The liquidator receives and examines claims of creditors.

The assets of the company are applied towards satisfaction of lawful liabilities according to the applicable statutory order of priority.

11. Contributories May Be Required to Contribute

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If the company's assets are insufficient to meet its liabilities, persons liable to contribute to the company's assets may be required to make contributions according to the Companies Act.

This brings us to the second part of the question.

PART II — CONTRIBUTORY

12. Meaning of Contributory

A **contributory** is a person liable to contribute to the assets of a company in the event of winding up.

The term includes a person whose liability is to contribute to the assets of the company in accordance with the Companies Act.

The concept is important because the company's creditors are primarily paid from company assets, but where the law imposes an unpaid liability on members, that liability may be called upon during winding up.

13. Who Can Be a Contributory?

A contributory may include:

1. Present Member

A current shareholder/member of the company.

2. Past Member

In specified circumstances, a former member may also be liable, subject to the statutory conditions and limitations.

3. Legal Representative

Where a member has died, the legal representative may be relevant to the contributory liability according to the law governing the estate.

14. Nature of Liability of a Contributory

The liability of a contributory is generally **statutory**.

It does not mean that every shareholder automatically becomes personally liable for all debts of the company.

The liability depends upon:

- the type of company;
- the nature of the shares;
- the amount remaining unpaid;
- the statutory provisions;
- whether the person is a present or past member.

15. Limited Liability of Shareholders

In a **company limited by shares**, the liability of a member is ordinarily limited to the amount unpaid on the shares held by him.

Example

A shareholder holds shares having a total face value of:

₹1,00,000

He has already paid:

₹80,000

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Amount unpaid:

₹20,000

If the company goes into winding up, his liability ordinarily cannot exceed the **₹20,000 unpaid amount**, subject to the applicable statutory rules.

16. Liability of Member of Company Limited by Guarantee

In a company limited by guarantee, a member's liability is generally limited to the amount which he has undertaken to contribute to the assets of the company in the event of winding up.

Example

A member gives a guarantee of:

₹50,000

His liability under the guarantee may extend to that amount, subject to the statutory conditions.

17. Liability in an Unlimited Company

In an **unlimited company**, the liability of members is not limited in the same manner as members of a company limited by shares.

Consequently, the contributory liability may extend beyond the unpaid amount on shares, subject to the statutory scheme.

18. List of Contributories

The Companies Act contains provisions for preparation and settlement of the **list of contributories**.

The liquidator identifies persons who may be required to contribute to the assets of the company.

The list is important because it establishes who is liable to contribute and to what extent.

19. Nature of Contributory's Liability — Important Points

1. Liability is statutory

It arises because of company law and the member's relationship with the company.

2. Liability is generally limited

For a company limited by shares, it normally extends to the unpaid amount on shares.

3. Liability is not the same as liability for all company debts

A shareholder is not ordinarily personally responsible for the entire debt of the company merely because he is a shareholder.

4. Liability may arise during winding up

The liability becomes particularly relevant when company assets are insufficient and contribution is required.

5. Liability depends upon the type of company

The position differs between:

- company limited by shares;
- company limited by guarantee;
- unlimited company.

20. Present Member and Past Member

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This is an important LL.M. examination point.

Present Member

The existing member may be required to contribute the amount remaining unpaid on his shares, subject to the Act.

Past Member

A former member may be liable in circumstances prescribed by the Companies Act. However, the liability of a past member is subject to statutory restrictions and is not unlimited merely because he was previously a shareholder.

21. Liability of Directors and Officers

A director is not personally liable for all company debts merely because he is a director. However, personal liability can arise where:

- the Companies Act specifically imposes it;
- the director has committed fraud;
- there has been misfeasance;
- the director has acted beyond authority;
- another law creates personal liability.

Thus, the principle of **separate legal personality** continues even during winding up, subject to statutory exceptions.

22. Contribution to the Company's Assets

The purpose of contribution is not to punish members.

Its purpose is to provide the liquidator with funds necessary to:

1. discharge lawful liabilities;
2. meet liquidation expenses;
3. satisfy claims according to statutory priority.

23. Important Distinction

Shareholder's Liability

Unpaid amount on shares ≠ Company's Liability

Entire debt owed by the company

This is one of the most important principles to write in the examination.

24. Example

Suppose:

ABC Ltd. owes creditors:

₹1 crore

Company assets available:

₹70 lakh

Therefore, there is a shortfall of:

₹30 lakh

There are shareholders whose shares are partly unpaid.

If the unpaid amount on their shares totals ₹30 lakh, the liquidator may call upon them to contribute the unpaid amount according to law.

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But if a shareholder's shares are **fully paid**, he is not ordinarily required to contribute merely because the company has debts.

25. Important Case Law

⭐ **1. Salomon v. Salomon & Co. Ltd.**

The company is a separate legal entity from its members.
Therefore, shareholders are not ordinarily personally liable for company debts.

⭐ **2. Re National Bank of Wales Ltd.**

The case illustrates principles concerning liability of persons responsible for the company's affairs in liquidation.

⭐ **3. Knowles v. Scott**

Useful for understanding principles relating to contributory liability in winding up.
For this question, **Salomon** is particularly useful to establish the distinction between company liability and member liability.

26. Consequences — Exam Flow Chart

Winding-Up Order

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Liquidator takes charge

↓

Company's ordinary management ends/restricted

↓

Assets collected

↓

Claims investigated

↓

Creditors paid according to law

↓

Contributories called upon where necessary

↓

Surplus distributed

↓

Dissolution

27. Contributory Liability — Flow Chart

Member

↓

What type of company?

Limited by Shares

↓

Unpaid amount on shares

Limited by Guarantee

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↓

Amount guaranteed

Unlimited Company

↓

Liability not limited in the same manner

28. Conclusion

A winding-up order marks the commencement of the formal liquidation process of a company. It results in the Company's affairs being placed under the statutory winding-up mechanism, with the **Company Liquidator** taking the necessary steps to collect assets, settle liabilities and ultimately obtain dissolution.

A **contributory** is a person liable to contribute to the company's assets in winding up. In a company limited by shares, the liability of a member is ordinarily limited to the **amount unpaid on his shares**, whereas the position is different for companies limited by guarantee and unlimited companies.

⭐ **Best examination conclusion**

"The effect of a winding-up order is to place the company's affairs under the statutory liquidation process, while the liability of a contributory is a statutory liability to contribute to the company's assets to the extent prescribed by the Companies Act. The principle of separate legal personality ensures that a shareholder is not ordinarily liable for the entire debts of the company."

🔥 **Must Remember for Q2**

Section 278 → Effect of winding-up order

Section 279 → Stay of suits/proceedings

Section 280 → Jurisdiction of Tribunal

Section 281 → Liquidator's report

Section 285 → Contributories

Section 290 → Liquidator's powers and duties

Core principle:

Limited Company → Member's liability generally = unpaid amount on shares

Company's debt ≠ Shareholder's personal debt

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QUESTION 3 — APRIL 2022

Discuss the Statutory Provisions Relating to the Winding Up of Unregistered Companies

1. Introduction

An **unregistered company** is a company which is not registered under the Companies Act, 2013 or under any previous company law.

The Companies Act, 2013 contains special provisions for winding up such companies because they do not have the same statutory status as registered companies.

The relevant provisions are mainly contained in **Sections 375 to 378 of the Companies Act, 2013**.

2. Meaning of Unregistered Company

Section **375(1)** provides that the provisions relating to winding up of unregistered companies apply to an **unregistered company**.

The term broadly covers a company which is not registered under the Companies Act or previous company law.

However, the definition is subject to the statutory provisions and exclusions.

3. What is Included?

For the purposes of winding up, an unregistered company may include:

- a foreign company carrying on business in India in circumstances covered by the provision;
- an association or body which is not registered as a company but satisfies the statutory requirements;
- certain entities having corporate characteristics but lacking registration under Indian company law.

4. Important Principle

An unregistered company **cannot be wound up merely because it is unregistered**.

The statutory conditions prescribed under the Companies Act must be satisfied.

The Tribunal has jurisdiction to wind up an unregistered company in the circumstances specified by law.

5. Section 375 — Winding Up of Unregistered Companies

Section **375** is the principal provision.

It provides that an unregistered company may be wound up under the Companies Act in the circumstances prescribed by the section.

The Tribunal exercises the relevant jurisdiction.

6. Circumstances in Which an Unregistered Company May Be Wound Up

An unregistered company may be wound up where:

1. Company has ceased to carry on business

If the company has ceased to carry on business, the statutory requirements may justify winding up.

2. Company is unable to pay its debts

Inability to pay debts is an important ground.

Where the company's liabilities cannot be met, winding up may be sought.

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3. Just and equitable ground

The Tribunal may order winding up where it is **just and equitable** to do so, subject to the statutory requirements.

4. Statutory circumstances

The Act also specifies circumstances relating to the company's business, assets and liabilities in India.

7. Foreign Company and Unregistered Company

This is an important connection with the previous questions.

A foreign company may be incorporated outside India but carry on business in India.

Where it falls within the statutory framework relating to an **unregistered company**, the provisions governing winding up of unregistered companies can become relevant.

Therefore:

Foreign incorporation ≠ automatic exemption from Indian winding-up jurisdiction.

8. Section 376 — Winding Up of Foreign Companies

Section **376** is particularly important.

Where a foreign company has been carrying on business in India and has ceased to carry on business in India, it may nevertheless be wound up in accordance with the statutory provisions where the conditions are satisfied.

This provision provides a mechanism for dealing with the Indian business and assets of foreign entities.

9. Circumstances for Winding Up of Foreign Company

The Tribunal may exercise jurisdiction where, for example:

- the company has ceased to carry on business in India;
- the company is unable to pay its debts;
- circumstances exist which justify winding up under the Act;
- the company has assets or liabilities in India requiring liquidation.

10. Section 377 — Provisions of Part I to Apply

Section **377** provides for the application of relevant provisions of **Part I of Chapter XX** to winding up of unregistered companies, subject to the modifications and exceptions provided by the Act.

Therefore, the general principles governing winding up by the Tribunal may apply to unregistered companies as modified by the special provisions.

11. Section 378 — Saving and Other Provisions

Section **378** contains provisions relating to savings and application of the statutory framework.

The important point for examination is that the special provisions for unregistered companies operate alongside the general winding-up framework.

12. Petition for Winding Up

The winding-up process is initiated by presenting an appropriate petition before the competent Tribunal.

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The persons entitled to seek winding up depend upon the statutory provisions applicable to the unregistered company.

Creditors and other persons having a legitimate interest may approach the Tribunal in appropriate circumstances.

13. Assets Situated in India

One of the most important practical reasons for these provisions is that an unregistered/foreign entity may possess **assets in India**.

The winding-up process enables the Tribunal to deal with:

- property situated in India;
- debts due in India;
- Indian creditors;
- Indian business operations.

14. Protection of Indian Creditors

The provisions are particularly important for protecting Indian creditors.

Suppose a foreign/unregistered company:

- carries on business in India;
- incurs debts to Indian suppliers;
- subsequently stops business;
- leaves assets in India.

The statutory winding-up mechanism can provide a means for dealing with its Indian assets and satisfying legitimate claims.

15. Company Need Not Be Registered in India

The important principle is:

The absence of registration in India does not necessarily place an entity beyond the jurisdiction of Indian winding-up law.

Where the statutory requirements are satisfied, the Tribunal may exercise jurisdiction to wind up the entity.

16. Difference Between Registered and Unregistered Company Winding Up

Registered Company	**Unregistered Company**
Registered under Companies Act	Not registered under Indian company law
General winding-up provisions apply	Special provisions apply
Sections 270 onwards	Sections 375–378
Company has Indian corporate registration	Entity may be foreign/unregistered
Normal corporate liquidation framework	Special statutory safeguards

17. Important Safeguards

The law seeks to ensure that winding up of an unregistered company does not unfairly prejudice Indian creditors.

Important considerations include:

1. Indian assets

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Assets located in India can be brought within the liquidation process.

2. Indian debts

Claims of creditors in India can be considered.

3. Evidence of insolvency

The Tribunal may consider whether the company is unable to meet its liabilities.

4. Existing legal proceedings

The Tribunal can regulate proceedings connected with the winding-up process.

18. Effect of Winding Up

Once the Tribunal orders winding up:

1. the liquidation process begins;
2. assets are identified and realised;
3. claims are examined;
4. liabilities are settled according to applicable law;
5. surplus, if any, is dealt with according to law;
6. the winding-up process ultimately leads to dissolution in accordance with the statutory framework.

19. Important Case Law

For this question, **statutory provisions are more important than case law**.

However, you can refer generally to the principle that the winding-up jurisdiction is concerned with assets and liabilities within the court's territorial jurisdiction.

In an LL.M. answer, it is better to correctly explain **Sections 375–378** than to include unrelated case law.

20. Examination Flow Chart

UNREGISTERED COMPANY

↓

Business / Assets / Liabilities in India

↓

Statutory conditions satisfied

↓

Petition before Tribunal

↓

Winding-Up Order

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Liquidator

↓

Realisation of Indian Assets

↓

Settlement of Claims

↓

Distribution according to law

↓

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Dissolution

21. Important Sections to Memorise

Section 375

Winding up of unregistered companies

Section 376

Winding up of foreign companies

Section 377

Application of relevant winding-up provisions

Section 378

Savings / related statutory provisions

Memory Trick:

375 → Unregistered

376 → Foreign

377 → Application

378 → Savings

22. Conclusion

The Companies Act, 2013 does not leave unregistered companies carrying on business or holding assets in India completely outside the Indian winding-up jurisdiction. **Sections 375–378** provide a special statutory framework for winding up unregistered companies and dealing with the Indian assets and liabilities of such entities.

The provisions are particularly important in relation to **foreign companies**, because a company incorporated outside India may have business operations, creditors and assets in India.

⭐ **Best LL.M. examination conclusion**

"The provisions relating to winding up of unregistered companies are intended to prevent an entity from escaping Indian jurisdiction merely because it has not been registered under Indian company law. They provide a mechanism for protecting creditors and for realising and distributing assets situated in India in accordance with law."

🔥 **Quick Revision**

Chapter XX → Winding Up

Sections 375–378 → Unregistered Companies

375 → Unregistered company

376 → Foreign company

377 → Application of provisions

378 → Savings

Core purpose → Protect creditors + realise Indian assets + orderly liquidation

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QUESTION 4 — APRIL 2022

Who is a Liquidator? Explain the Duties and Powers of a Liquidator in Winding Up

1. Introduction

A **liquidator** is the person appointed to conduct the winding-up process of a company. His primary responsibility is to take control of the company's assets, realise them, settle lawful liabilities and distribute the remaining assets according to the statutory scheme.

Under the Companies Act, 2013, the principal provisions relating to a **Company Liquidator** are found in **Sections 275 to 290**.

2. Meaning of Liquidator

A liquidator is a person appointed to administer and complete the winding-up of a company.

In simple terms:

Liquidator = Person responsible for collecting and realising company assets, paying liabilities and completing the winding-up process.

The liquidator acts under the supervision of the **National Company Law Tribunal (NCLT)**.

3. Appointment of Company Liquidator — Section 275

Under **Section 275**, the Tribunal appoints a **Company Liquidator** from the panel maintained by the Central Government for the purpose.

The Tribunal also determines the terms and conditions of appointment, including remuneration, in accordance with the Act and applicable rules.

4. Position of Liquidator

The liquidator occupies a position of great responsibility.

He acts:

- for the benefit of the creditors and contributories;
- subject to the supervision of the Tribunal;
- in accordance with the Companies Act;
- with a duty to preserve and realise company assets.

He is not simply an agent of the directors or shareholders.

Once the liquidation process begins, the liquidator becomes the central authority for administering the company's affairs.

5. Main Objective of a Liquidator

The liquidator's principal objectives are:

1. Take custody of company property.
2. Protect and preserve assets.
3. Investigate the company's affairs where required.
4. Receive and examine claims.
5. Sell or otherwise realise assets.
6. Pay liabilities according to law.
7. Distribute surplus, if any.
8. Complete the winding-up process.
9. Report to the Tribunal.
10. Seek dissolution after completion of winding up.

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PART I — DUTIES OF LIQUIDATOR

6. Take Custody and Control of Assets

One of the first duties of the liquidator is to take custody or control of the company's property and actionable claims.

He must ensure that company assets are not:

- removed;
- misappropriated;
- wasted;
- unlawfully transferred.

7. Preserve Company Property

The liquidator must take reasonable steps to preserve the value of the company's assets.

For example:

- maintaining machinery;
- protecting buildings;
- preserving documents;
- securing inventory;
- collecting receivables.

8. Prepare Inventory

The liquidator should identify and record:

- movable assets;
- immovable properties;
- investments;
- bank accounts;
- receivables;
- intellectual property;
- other property belonging to the company.

This enables proper realisation and accounting.

9. Receive and Examine Claims

Creditors submit their claims to the liquidator.

The liquidator examines:

- amount claimed;
- supporting documents;
- nature of debt;
- security;
- priority.

He admits or rejects claims according to law.

10. Realise Company Assets

The liquidator may sell or otherwise realise company assets in accordance with the Act and directions of the Tribunal.

The objective is generally to obtain the best possible realisation consistent with law and the circumstances.

11. Pay Liabilities

The proceeds realised from company assets are applied towards lawful liabilities according to the statutory order of priority.

The liquidator must ensure that payments are made properly and are supported by records.

12. Maintain Proper Accounts

The liquidator must maintain proper books and accounts of the winding-up process.

The accounts should reflect:

- receipts;
- payments;
- sale proceeds;
- expenses;
- distributions;
- other transactions.

13. Prepare Reports

The liquidator is required to submit reports to the Tribunal concerning the affairs and progress of the winding up.

Section **281** is particularly important regarding the liquidator's report.

14. Investigate the Company's Affairs

Where necessary, the liquidator may examine:

- conduct of directors;
- transactions;
- financial records;
- suspicious dealings;
- fraudulent transactions;
- misfeasance.

If wrongdoing is discovered, appropriate proceedings may be initiated.

15. Take Action Against Debtors

The liquidator must collect money owed to the company.

For example:

If customers owe the company ₹50 lakh, the liquidator should take appropriate steps to recover the amount.

16. Prepare List of Contributories

The liquidator identifies persons who may be liable to contribute to the company's assets.

This includes, where applicable:

- present members;
- past members;
- persons otherwise liable under the Act.

17. Distribute Assets

After payment of liabilities and liquidation expenses, any remaining assets are distributed among persons entitled to them according to the applicable legal order.

18. Apply for Dissolution

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After the affairs of the company have been completely wound up, the liquidator applies to the Tribunal for dissolution under **Section 302**.

The Tribunal may then pass an order dissolving the company.

PART II — POWERS OF LIQUIDATOR

Section **290** is particularly important for this question.

The Company Liquidator has extensive statutory powers to enable him to conduct the winding up effectively.

19. Power to Carry on Business

The liquidator may carry on the business of the company **so far as may be necessary for the beneficial winding up of the company**.

Example

A company operates a manufacturing unit.

Immediately shutting it down would reduce the value of the business.

The liquidator may continue operations temporarily in order to obtain a better realisation.

20. Power to Sell Property

The liquidator can sell:

- movable property;
- immovable property;
- actionable claims;
- other assets;

subject to the Companies Act, rules and Tribunal supervision.

21. Power to Sell Business as a Going Concern

Where beneficial, the business may be sold as a **going concern** rather than selling individual assets separately.

This may maximise value for creditors and stakeholders.

22. Power to Institute or Defend Legal Proceedings

The liquidator may institute or defend proceedings on behalf of the company where necessary for the purposes of winding up.

For example:

- recovery suits;
- property disputes;
- contractual claims;
- proceedings against debtors.

23. Power to Investigate Transactions

The liquidator can examine the company's transactions and records to determine whether:

- assets were improperly transferred;
- fraud occurred;
- directors committed misfeasance;
- transactions were entered into to defeat creditors.

24. Power to Execute Documents

The liquidator can execute deeds, receipts and other documents necessary for completing the winding up.

25. Power to Obtain Professional Assistance

Where necessary, the liquidator may obtain assistance from:

- advocates;
- chartered accountants;
- valuers;
- engineers;
- other professionals.

This is particularly important where the company has complex assets or litigation.

26. Power to Settle Claims

Subject to the statutory framework, the liquidator can examine and settle claims made against the company.

He must distinguish between:

- secured creditors;
- unsecured creditors;
- preferential claims;
- other statutory claims.

27. Power to Compromise

Where legally permissible and beneficial to the winding-up process, the liquidator may compromise or settle claims subject to the statutory requirements and Tribunal supervision.

28. Power to Call Contributories

Where the company's assets are insufficient, the liquidator can take steps to require contributories to contribute the amounts legally payable.

29. Power to Obtain Information

The liquidator can require persons connected with the company to provide relevant:

- books;
- documents;
- information;
- explanations.

This helps in determining the true financial position of the company.

30. Power to Take Custody of Books and Records

Company books and records are essential for determining:

- assets;
- liabilities;
- transactions;
- creditor claims;
- conduct of management.

The liquidator can take control of these records as required.

31. Duty to Act Impartially

A liquidator must not favour one creditor or contributory over another contrary to law.

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He must act according to:

- statutory priorities;
- Tribunal directions;
- principles of fairness;
- fiduciary responsibilities.

32. Liquidator and Tribunal

The liquidator does not have unlimited powers.

He operates under the:

NCLT

and must comply with:

- the Companies Act;
- applicable rules;
- Tribunal orders;
- directions issued during liquidation.

Therefore:

Liquidator = Administrator of liquidation under Tribunal supervision.

33. Liquidator — Duties and Powers at a Glance

Duties	**Powers**
Take custody of assets	Sell assets
Preserve property	Carry on business where necessary
Examine claims	Institute/defend proceedings
Collect debts	Recover money
Prepare accounts	Execute documents
Prepare reports	Investigate transactions
Identify contributories	Call contributions
Pay liabilities	Compromise claims where permitted
Distribute surplus	Obtain professional assistance
Apply for dissolution	Take custody of records

---

34. Important Statutory Provisions

For examination, remember:

Section 275

Appointment of Company Liquidator

Section 276

Removal and replacement of liquidator

Section 277

Intimation to Company Liquidator

Section 281

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Liquidator's report

Section 285

List of contributories

Section 290

Powers and duties of Company Liquidator

Section 302

Dissolution of company

35. Important Case Law

⭐ **Sudarsan Chits (I) Ltd. v. O. Sukumaran Pillai**

The Supreme Court discussed the role and powers of the Company Court in relation to winding-up proceedings.

⭐ **Madhusudan Gordhandas & Co. v. Madhu Woollen Industries Pvt. Ltd.**

The Supreme Court explained principles concerning winding-up proceedings and the interests of creditors and company stakeholders.

For this question, however, **Section 290 + the practical duties and powers** are more important than excessive case-law discussion.

36. Exam Diagram

Draw this diagram in the examination:

WINDING-UP ORDER

↓

COMPANY LIQUIDATOR

↓

Take custody of assets

↓

Investigate affairs

↓

Receive & examine claims

↓

Realise assets

↓

Pay liabilities

↓

Distribute surplus

↓

Final accounts/report

↓

DISSOLUTION

37. Conclusion

The liquidator is the **central officer responsible for implementing the winding-up process**. His role is to protect and realise company assets, examine and settle claims, recover debts,

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make distributions according to law and ultimately bring the company's affairs to an orderly conclusion.

The Companies Act, 2013 gives the Company Liquidator substantial powers under **Section 290**, but those powers must be exercised within the statutory framework and under the supervision of the Tribunal.

⭐ **Best LL.M. examination conclusion**

"The liquidator acts as the administrator of the company's liquidation. His fundamental duty is to convert the company's assets into money, settle its lawful liabilities in accordance with statutory priorities, protect the interests of stakeholders and complete the winding up leading to dissolution."

🔥 **Quick Revision**

275 → Appointment
281 → Report
285 → Contributories
290 → Powers & Duties
302 → Dissolution

Remember:

"Take → Protect → Investigate → Realise → Pay → Distribute → Dissolve."

QUESTION 5 — APRIL 2022

What is a Defunct Company? Explain the Provisions Relating to Removal of the Name of a Defunct Company from the Register of Companies

1. Introduction

A company may stop carrying on business and become inactive, but its name may continue to remain on the **Register of Companies**. Such a company is commonly described as a **defunct company**.

The Companies Act, 2013 provides a statutory mechanism for removing the name of a company that is no longer carrying on business or operation.

The principal provisions are **Sections 248 to 252**.

2. Meaning of Defunct Company

A **defunct company** is generally understood as a company which has ceased to carry on business or has become inactive and has no intention of continuing its operations.

In simple words:

A defunct company is a company that has stopped doing business but continues to exist on the Register until its name is legally removed.

Important distinction

Defunct company ≠ dissolved company

A defunct company may still have its name on the Register.

After its name is removed and the statutory consequences follow, the company is treated as dissolved, subject to the right of restoration under Section 252.

3. Removal of Name — Section 248

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Section **248** provides the statutory mechanism for removal of the name of a company from the Register of Companies.

There are two principal routes:

A. Registrar's own action

The **Registrar of Companies (ROC)** may initiate removal of the company's name where the statutory conditions are satisfied.

B. Application by the Company

The company itself may apply for removal of its name from the Register, subject to the statutory conditions.

4. Grounds for Removal by Registrar

Under **Section 248(1)**, the Registrar may initiate action where he has reasonable cause to believe that:

1. Company has failed to commence business

The company has failed to commence its business within **one year of incorporation**.

2. Company is not carrying on business

The company is not carrying on any business or operation for a period of **two immediately preceding financial years** and has not made an application within that period for obtaining the status of a **dormant company under Section 455**.

These are extremely important points for the examination.

5. Notice by Registrar

Before removing the company's name, the Registrar must issue a notice to the company and all directors in the prescribed manner.

The notice gives them an opportunity to explain why the company's name should not be removed.

This is an important principle of **natural justice**.

6. Opportunity to Respond

The company and its directors are given the prescribed period to submit:

- objections;
- representations;
- supporting documents.

If they establish that the company is carrying on business or should continue to remain registered, the Registrar may stop the removal process.

7. Publication of Notice

The Registrar publishes notice of the proposed removal in the prescribed manner.

This provides an opportunity to:

- members;
- creditors;
- other interested persons

to bring relevant facts to the Registrar's attention.

8. Application by Company — Section 248(2)

A company may itself apply to the Registrar for removal of its name where it has:

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- extinguished its liabilities; and
- passed the prescribed resolution or obtained the required consent.

The application must comply with the Companies Act and applicable rules.

9. Important Restrictions

The power to remove a company's name is **not available in every situation**.

Section 249 imposes restrictions on applications under Section 248(2).

For example, an application cannot ordinarily be made where, during the prescribed period, the company has undertaken specified activities such as:

- changing its name;
- shifting registered office from one State to another;
- disposing of property or rights held for the purpose of gain;
- engaging in other specified activities.

The purpose is to prevent companies from using strike-off merely to escape legal obligations.

10. Effect of Removal — Section 250

Once the name of a company is removed from the Register under Section 248, the company **stands dissolved** from the date specified in the relevant notice.

However, the law preserves certain liabilities and rights.

Important:

Removal of name does not automatically extinguish the liabilities of directors, officers or members where the law continues to impose them.

11. Liabilities Continue

Section 248 specifically protects the interests of creditors and other stakeholders.

The dissolution of the company does not mean that:

- fraudulent conduct becomes lawful;
- outstanding liabilities automatically disappear;
- directors are automatically released from statutory liabilities.

Therefore, strike-off is **not a method of escaping debts or legal obligations**.

12. Publication of Notice of Dissolution

After completing the required procedure, the Registrar publishes the notice of removal of the company's name from the Register in the **Official Gazette**.

The company is then treated as dissolved.

13. Restoration of Company — Section 252

This is a very important part of the answer.

A company whose name has been removed can, in appropriate circumstances, be restored to the Register.

The **National Company Law Tribunal (NCLT)** has jurisdiction under Section 252.

14. Appeal/Application by Aggrieved Person

A person aggrieved by the Registrar's order removing the company's name may approach the Tribunal within the statutory period.

The Tribunal may restore the company if it is satisfied that:

- the company was carrying on business or operation; or

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- it is otherwise just that the company should be restored.

15. Restoration at the Request of Company, Member or Creditor

Where the company's name has been struck off, the company, a member or a creditor may apply to the Tribunal for restoration in accordance with Section 252.

The Tribunal may restore the name if the statutory requirements are satisfied.

16. Effect of Restoration

When the Tribunal orders restoration:

The company is generally treated as if its name had **not been struck off**, subject to the Tribunal's directions.

Therefore, restoration can revive:

- corporate rights;
- property rights;
- legal proceedings;
- liabilities;
- contractual relationships,

subject to the Tribunal's order and applicable law.

17. Why Strike-Off Is Provided

The purpose of the strike-off mechanism is to:

1. clean the Register of Companies;
2. remove inactive companies;
3. reduce unnecessary compliance burden;
4. maintain accurate corporate records;
5. prevent misuse of dormant corporate entities.

18. Defunct Company vs Dormant Company

This distinction is useful.

Defunct Company	**Dormant Company**
Has ceased business/operations	Legally recognised inactive company
May be subject to strike-off	Continues on the Register
Name may be removed	Name remains registered
Dissolution may follow strike-off	Company continues as a corporate entity
Section 248 relevant	Section 455 relevant

Important:

A company that is inactive but wants to preserve its corporate existence may consider **dormant company status under Section 455**, if eligible.

19. Defunct Company vs Winding Up

These should not be confused.

Defunct Company

Main issue:

Removal of name from Register

Winding Up

Main issue:

Realisation of assets + settlement of liabilities + liquidation + dissolution

Thus, strike-off and winding up are different legal mechanisms.

20. Procedure — Easy Flow Chart

COMPANY BECOMES INACTIVE

↓

ROC examines statutory conditions

OR

Company applies for strike-off

↓

Notice under Section 248

↓

Opportunity for objections

↓

ROC considers representations

↓

Notice of removal

↓

Name removed from Register

↓

Company dissolved

↓

Section 252

Restoration possible in appropriate cases

21. Important Sections

For examination, remember:

Section	Subject
248	Removal of name of company from Register
249	Restrictions on making application under Section 248(2)
250	Effect of company notified as dissolved
251	Fraudulent application for removal
252	Appeal to Tribunal for restoration

Memory Trick:

248 → Remove

249 → Restrictions

250 → Effect

251 → Fraud

252 → Restore

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22. Fraudulent Application — Section 251

This is an important additional point.

Where an application for removal of a company's name is made with the intention of evading:

- liabilities;
- legal proceedings; or
- deceiving creditors,

the persons responsible may face statutory consequences.

Therefore:

Strike-off cannot lawfully be used as a device to defeat creditors.

23. Important Case Law

For this question, the **statutory provisions are more important than case law**.

In an LL.M. examination, your answer will be stronger if you accurately explain:

Sections 248–252 + procedure + restoration + liability

rather than inserting unrelated cases.

24. Examination Example

Suppose:

ABC Pvt. Ltd.

was incorporated in 2020.

It never commenced business.

It has no active operations and has not obtained dormant status.

The ROC obtains reasonable cause to believe that the company is not carrying on business.

The ROC can initiate the statutory strike-off process under **Section 248**, after following the required notice and procedural safeguards.

If the name is ultimately removed:

ABC Pvt. Ltd. → Dissolved

However, if a creditor later establishes that the company should be restored, an application may be made to the NCLT under **Section 252**, subject to the statutory requirements.

25. Conclusion

A defunct company is essentially an inactive company which has ceased to carry on business or operations. The Companies Act, 2013 provides a systematic procedure for removing the names of such companies from the Register under **Section 248**.

The procedure incorporates safeguards such as notice and opportunity to make representations. After removal, the company stands dissolved, but the law preserves relevant liabilities and provides a mechanism for **restoration under Section 252**.

⭐ **Best LL.M. examination conclusion**

"The strike-off mechanism is intended to maintain an accurate Register of Companies by removing genuinely inactive entities, while Sections 248–252 ensure that such removal does not become a means of defeating creditors, avoiding liabilities or frustrating legitimate legal claims."

🔥 **1-Minute Revision**

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Defunct company → Inactive company
248 → Removal
249 → Restrictions
250 → Dissolution/effect
251 → Fraudulent application
252 → Restoration
Most important line:
"Strike-off is not a device for escaping liability; the law preserves the rights of creditors and provides restoration where justice requires it."

QUESTION 7 — APRIL 2022
Explain the Circumstances in Which the Central Government May Order an Investigation into the Affairs of a Company and Discuss the Powers of an Inspector
1. Introduction
The Companies Act, 2013 provides mechanisms for investigating the affairs of a company where there are circumstances suggesting:

- fraud,
- mismanagement,
- misconduct,
- improper management of company affairs, or
- conduct prejudicial to members, creditors or public interest.

The principal provisions are contained in **Chapter XIV — Sections 206 to 229** of the Companies Act, 2013.
For this question, the most important provisions are:

- **Section 210** — Investigation into affairs of company
- **Section 211** — Establishment of SFIO
- **Section 212** — Investigation by SFIO
- **Section 213** — Investigation on application/other circumstances
- **Section 217** — Procedure and powers of inspectors
- **Section 218** — Protection of employees during investigation
- **Section 219** — Investigation of related companies
- **Section 223** — Inspector's report
- **Section 224** — Action on inspector's report

PART I — INVESTIGATION INTO COMPANY'S AFFAIRS
2. Meaning of Investigation
Investigation means a **systematic examination and inquiry into the affairs, management, books, accounts, transactions and conduct of a company** to determine whether the company has complied with law and whether fraud, misconduct or other irregularities have occurred.
It is more extensive than an ordinary inspection of records.
3. Investigation by Central Government — Section 210

Section **210** provides for investigation into the affairs of a company.
The Central Government may order an investigation where it considers it necessary to investigate the affairs of a company.
An investigation may also follow circumstances or directions specified under the Act.

4. Circumstances for Investigation

The Central Government may order an investigation where it considers that an investigation is necessary because of circumstances such as:

1. Protection of Public Interest

Where the affairs of the company require investigation in the **public interest**.

2. Fraud or Misconduct

Where there are allegations or circumstances suggesting:

- fraud;
- misfeasance;
- misconduct;
- improper management.

3. Unlawful Purpose

Where the company may have been formed or operated for an unlawful purpose.

4. Oppression or Mismanagement

Where the manner in which the company is being managed raises serious concerns affecting members or other stakeholders.

5. Investor/Creditor Interests

Where investigation is necessary to protect the interests of:

- shareholders;
- investors;
- creditors;
- employees;
- public.

5. Investigation Ordered by Special Resolution

Where the company itself passes a **special resolution** requesting investigation into its affairs, the Central Government may order an investigation.
This allows shareholders themselves to trigger governmental investigation where serious concerns exist.

6. Investigation in Public Interest

The Central Government may also order investigation where it considers that circumstances indicate that the company's affairs need to be investigated in the **public interest**.
This is an important ground because corporate misconduct can affect not merely shareholders but also:

- creditors;
- employees;
- consumers;
- investors;

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- financial markets;
- the public at large.

7. Inspector of Investigation

Once investigation is ordered, the Central Government appoints one or more **inspectors** to investigate the affairs of the company.

The inspector functions as an investigative authority and has statutory powers to obtain evidence and examine relevant persons and documents.

PART II — SERIOUS FRAUD INVESTIGATION OFFICE

8. SFIO — Section 211

The **Serious Fraud Investigation Office (SFIO)** is established under Section 211.

It is a specialised investigating agency for serious corporate fraud.

Where a case is assigned to SFIO under the Companies Act, it conducts investigation in accordance with the statutory framework.

9. Investigation by SFIO — Section 212

The Central Government may assign investigation of a company's affairs to the **SFIO** where the circumstances specified under Section 212 exist.

Once the case is assigned to SFIO, the investigation is conducted by the SFIO in accordance with the Act.

This is particularly relevant in cases involving:

- serious fraud;
- complex corporate structures;
- large-scale financial irregularities;
- public interest.

PART III — POWERS OF INSPECTOR

10. Power to Examine Books and Documents

An inspector can require production of relevant:

- books of account;
- registers;
- records;
- documents;
- papers;
- other information.

The company and persons concerned are required to cooperate according to law.

11. Power to Inspect Company Records

The inspector can inspect the company's books and records to determine:

- financial transactions;
- ownership;
- management decisions;
- related-party transactions;
- movement of funds;
- compliance with law.

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12. Power to Summon Persons

One of the most important powers of an inspector is the power to **summon persons for examination**.

The inspector may require:

- directors;
- officers;
- employees;
- former officers;
- agents;
- other relevant persons

to appear and provide information.

13. Power to Examine on Oath

The inspector can examine persons concerned with the company's affairs and record their statements in accordance with the statutory procedure.

This helps the inspector determine the facts behind suspicious transactions.

14. Power to Require Information

The inspector may require persons connected with the company to furnish information relating to:

- company transactions;
- accounts;
- assets;
- liabilities;
- management;
- other relevant matters.

Failure to cooperate can attract statutory consequences.

15. Power to Investigate Related Companies

An investigation need not always stop with the company originally under investigation.

Under **Section 219**, an inspector may investigate the affairs of related companies and certain other entities where the circumstances justify such investigation.

This is important because corporate fraud can be hidden through:

- subsidiaries;
- holding companies;
- associated companies;
- related entities.

16. Investigation of Officers and Agents

The investigation may extend to persons who have been involved in the company's affairs.

This can include:

- present directors;
- former directors;
- managing directors;
- key managerial personnel;

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- officers;
- employees;
- agents.

The purpose is to determine responsibility for misconduct.

17. Power to Examine Other Persons

The inspector may also examine persons who have had relevant dealings with the company.

For example:

- auditors;
- consultants;
- intermediaries;
- professionals;
- persons holding company information.

The exact scope depends upon the statutory provisions and circumstances of the investigation.

18. Search and Seizure

In serious investigations, particularly those conducted under the statutory framework applicable to SFIO, the law provides powers relating to **search and seizure** subject to statutory safeguards.

These powers are intended to prevent destruction or concealment of evidence.

19. Protection of Evidence

The investigator can take steps to ensure that relevant:

- documents;
- books;
- electronic records;
- financial information

are preserved for investigation.

This is particularly important in cases involving suspected fraud.

20. Inspector's Report — Section 223

After completing the investigation, the inspector prepares a **report** setting out the findings.

The report may contain:

- facts discovered;
- irregularities;
- misconduct;
- fraud;
- responsibility of persons concerned;
- other relevant findings.

The report is submitted to the Central Government.

21. Action on Inspector's Report — Section 224

Where the investigation reveals offences or misconduct, the Central Government may take appropriate action based on the inspector's report.

This may include:

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- prosecution;
- recovery proceedings;
- action against officers;
- other statutory measures.

Therefore:

Investigation → Report → Government action

22. Protection of Employees — Section 218

The Companies Act provides safeguards concerning employees during an investigation.

The purpose is to prevent an employee from being unfairly prejudiced merely because he has:

- provided information;
- assisted the investigation;
- produced evidence.

This encourages employees to cooperate with investigators.

23. Investigation of Related Companies — Section 219

An inspector may extend investigation to certain related companies or other entities where the circumstances require it.

This prevents a company from concealing wrongdoing through a corporate network.

Example:

Holding Company → Subsidiary → Another related company

If suspicious transactions move through the subsidiary, investigation can extend to relevant related entities.

24. Why Government Investigation Is Important

Corporate fraud can affect thousands of people.

For example:

Company

↓

False accounts

↓

Investors invest money

↓

Company funds diverted

↓

Creditors unpaid

↓

Public suffers

Therefore, government investigation provides a mechanism for discovering and preventing serious corporate misconduct.

25. Difference Between Inspection and Investigation

Inspection	Investigation
Generally preliminary	More detailed
Examines compliance/records	Examines affairs and conduct comprehensively
Less extensive	Wider statutory powers
May identify irregularities	Determines facts and responsibility
Usually limited in scope	Can extend to related entities in appropriate cases

26. Investigation vs Audit

Audit

Mainly examines whether financial statements present a true and fair view according to applicable standards and law.

Investigation

Seeks to discover:

- fraud;
- misconduct;
- irregularities;
- unlawful transactions;
- persons responsible.

Therefore:

Audit ≠ Investigation

An investigation can be ordered even where a company's ordinary audit does not adequately reveal the suspected wrongdoing.

27. Important Sections for Examination

Memorise this sequence:

Section	Subject
206	Power to call for information, inspect books and conduct inquiries
210	Investigation into affairs of company
211	Serious Fraud Investigation Office
212	Investigation by SFIO
213	Investigation on application
217	Procedure and powers of inspectors
218	Protection of employees
219	Investigation of related companies
223	Inspector's report
224	Action on report

Memory sequence:

210 → Investigation

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211 → SFIO
212 → SFIO Investigation
217 → Inspector Powers
219 → Related Companies
223 → Report
224 → Action

28. Examination Diagram

Draw this for a 15-mark answer:

SUSPICION / PUBLIC INTEREST
↓
CENTRAL GOVERNMENT
↓
Orders Investigation
↓
INSPECTOR / SFIO
↓
Books + Accounts + Records
↓
Summons + Examination
↓
Related Companies
↓
INVESTIGATION REPORT
↓
CENTRAL GOVERNMENT
↓
Prosecution / Other Legal Action

29. Important Case Law

For this question, the **statutory provisions are more important than case law**.
You can mention that investigation provisions are intended to protect shareholders, creditors and the public from corporate fraud and misconduct.
If you want to add an authority, **Sahara India Real Estate Corporation Ltd. v. SEBI** is useful for understanding the importance of regulatory investigation and protection of investors, although it is not a direct substitute for the statutory provisions under Chapter XIV.

30. Conclusion

The Companies Act, 2013 gives the Central Government extensive powers to investigate the affairs of companies where circumstances warrant governmental intervention. The appointment of inspectors and the establishment of the **Serious Fraud Investigation Office (SFIO)** provide specialised mechanisms for investigating serious corporate fraud.
The inspector's powers to obtain documents, summon and examine persons, investigate related companies and prepare a report are essential for discovering corporate misconduct.

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The investigation process ultimately enables the Government to take appropriate legal action.

⭐ **Best LL.M. examination conclusion**

"The investigation provisions of the Companies Act, 2013 constitute an important mechanism for corporate accountability. They balance the autonomy of companies with the need to protect shareholders, creditors, investors and public interest by empowering the Central Government and inspectors to uncover fraud, misconduct and irregularities and to initiate appropriate action."

🔥 **1-Minute Revision**

206 → Information/inspection/inquiry
210 → Government investigation
211 → SFIO
212 → SFIO investigation
217 → Inspector's powers
219 → Related companies
223 → Inspector's report
224 → Action on report

Remember the sequence:

INFORMATION → INVESTIGATION → INSPECTOR → EVIDENCE → REPORT → ACTION

QUESTION 8 — APRIL 2022

Explain the Rehabilitation of Sick Industrial Companies

1. Introduction

A **sick industrial company** is an industrial company that has become financially weak and is unable to function normally because of accumulated losses, financial difficulties or other circumstances.

The objective of rehabilitation is to **revive and restore a potentially viable company**, rather than immediately liquidating it.

For your **2022 LL.M. paper**, this question is based on the legal framework relating to sick industrial companies. However, an important **current-law point** must be mentioned: the **Sick Industrial Companies (Special Provisions) Act, 1985 (SICA)** was repealed by the **Insolvency and Bankruptcy Code, 2016 (IBC)**. Therefore, in an exam today, explain the historical SICA framework and then state the present position.

2. Meaning of Sick Industrial Company

Under the **Sick Industrial Companies (Special Provisions) Act, 1985**, a sick industrial company was essentially an industrial company whose accumulated losses and financial position had reached the statutory threshold indicating serious financial sickness.

The legislation was enacted to:

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- detect industrial sickness;
- determine whether a company was viable;
- provide rehabilitation measures;
- prevent unnecessary closure;
- protect employment and productive assets.

3. Objectives of Rehabilitation

The main objectives were:

1. Revival of viable companies

A company having reasonable prospects of revival should be rehabilitated rather than immediately liquidated.

2. Protection of employment

Closure of industrial companies may result in large-scale unemployment.

3. Protection of creditors

Rehabilitation may enable creditors to recover more than they would receive through immediate liquidation.

4. Protection of investors

Revival protects investment in productive enterprises.

5. Productive utilisation of assets

Factories, machinery and other productive assets should not be unnecessarily destroyed or left idle.

4. Historical Legal Framework — SICA, 1985

The **Sick Industrial Companies (Special Provisions) Act, 1985** created a special mechanism for dealing with industrial sickness.

Two important bodies were:

BIFR

Board for Industrial and Financial Reconstruction

AAIFR

Appellate Authority for Industrial and Financial Reconstruction

The BIFR examined cases of industrial sickness and determined whether rehabilitation was possible.

5. Reference to BIFR

Where an industrial company became sick within the meaning of SICA, the prescribed reference mechanism could be invoked before the **BIFR**.

The BIFR would examine:

- financial condition;
- accumulated losses;
- causes of sickness;
- viability;
- management;
- assets and liabilities;
- possibility of rehabilitation.

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6. Inquiry into Sickness

After receiving a reference, BIFR could conduct an inquiry to determine whether the company had become sick.

The purpose was not merely to identify losses.

The important question was:

Can this company be economically revived?

7. Determination of Viability

The company could broadly fall into two categories:

A. Viable Company

A company capable of revival through appropriate financial and managerial measures.

↓

Rehabilitation Scheme

B. Non-Viable Company

A company for which revival was not economically feasible.

↓

Winding Up

This distinction was central to the SICA framework.

8. Rehabilitation Scheme

Where rehabilitation was considered possible, a scheme could be prepared.

A rehabilitation scheme could contain measures relating to:

- financial restructuring;
- debt restructuring;
- change in management;
- merger;
- amalgamation;
- reconstruction;
- sale or lease of assets;
- financial assistance;
- other necessary measures.

9. Change of Management

Where existing management was responsible for the company's sickness or was incapable of reviving it, the rehabilitation process could involve changes in management.

The objective was:

Remove ineffective management → introduce better management → revive the company.

10. Financial Restructuring

Financial restructuring could include:

- rescheduling loans;
- restructuring debts;
- reduction or modification of liabilities;
- fresh finance;
- conversion of debt into equity;

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- other financial measures.

The objective was to restore the company's financial viability.

11. Merger or Amalgamation

Where appropriate, the sick company could be rehabilitated through:

- merger;
- amalgamation;
- reconstruction.

Example

Suppose:

Company A — Sick

Company B — Financially strong

If combination of the businesses can preserve employment and productive assets, amalgamation may form part of a rehabilitation strategy.

12. Sale or Lease of Assets

A rehabilitation scheme could provide for:

- sale of unnecessary assets;
- lease of assets;
- restructuring of productive units.

The proceeds could be used to improve the financial position of the company.

13. Financial Assistance

Rehabilitation may require additional finance.

Depending upon the applicable scheme and law, financial institutions and other stakeholders may participate in restructuring arrangements.

The objective is to provide the company with sufficient resources to resume viable operations.

14. Protection During Rehabilitation

A major purpose of the rehabilitation framework was to prevent individual actions from destroying the possibility of revival.

The historical SICA framework contained provisions restricting certain legal proceedings and enforcement actions during specified periods.

This gave the company an opportunity to implement the rehabilitation scheme.

15. Monitoring of Rehabilitation

A rehabilitation scheme required implementation and monitoring.

The objective was to determine whether:

- financial targets were achieved;
- management changes worked;
- operations improved;
- creditors were being paid;
- the company was returning to viability.

16. When Rehabilitation Failed

If the company was found to be:

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- commercially non-viable;
- incapable of rehabilitation;
- beyond reasonable revival;

the appropriate course could be **winding up**.

Thus:

Rehabilitation where viable; liquidation where revival is not feasible.

17. BIFR and AAIFR

BIFR

The **Board for Industrial and Financial Reconstruction** was the primary authority under SICA.

Its functions included:

- examining sickness;
- conducting inquiries;
- determining viability;
- preparing/recommending rehabilitation schemes;
- supervising rehabilitation.

AAIFR

The **Appellate Authority for Industrial and Financial Reconstruction** heard appeals against orders of BIFR.

Thus:

BIFR → Original authority

AAIFR → Appellate authority

18. Why SICA Was Repealed

Over time, the SICA mechanism was criticised for:

- lengthy proceedings;
- delays in rehabilitation;
- accumulation of losses;
- ineffective revival of many companies;
- overlap with other insolvency mechanisms.

Consequently, the law was replaced by the modern insolvency framework.

19. Present Legal Position — IBC, 2016

This is **very important for your LL.M. answer**.

The **Insolvency and Bankruptcy Code, 2016** repealed SICA.

Therefore, BIFR and AAIFR are no longer the current authorities for corporate insolvency resolution.

The present framework is based primarily on the **IBC, 2016**.

20. Corporate Insolvency Resolution Process — CIRP

Under the IBC, where a corporate debtor commits a **default**, the statutory insolvency resolution process may be initiated subject to the requirements of the Code.

The objective is not merely liquidation.

The IBC gives priority to:

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Resolution and value maximisation

before liquidation where a viable resolution is possible.

21. Role of NCLT

The **National Company Law Tribunal (NCLT)** is the adjudicating authority for corporate insolvency resolution under the IBC.

Therefore, the present structure is broadly:

Financial distress/default

↓

IBC

↓

NCLT

↓

CIRP

↓

Resolution Plan

↓

If successful → **Revival**

If unsuccessful → **Liquidation**

22. Resolution Plan

A resolution plan may provide for measures such as:

- restructuring of debt;
- change in management;
- merger;
- demerger;
- sale of assets;
- alteration of capital structure;
- other measures necessary for revival.

Thus, modern insolvency law continues the basic economic objective of rehabilitation but uses a different statutory mechanism.

23. Committee of Creditors

Under the IBC, the **Committee of Creditors (CoC)** plays a central role in the corporate insolvency resolution process.

The CoC evaluates resolution plans and exercises powers provided under the Code.

This is a major difference from the old BIFR framework.

24. Resolution Professional

During CIRP, an **Interim Resolution Professional/Resolution Professional** performs important functions relating to management and the insolvency process.

The Resolution Professional:

- manages the affairs of the corporate debtor during the process;
- collects information;
- verifies claims;

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- facilitates the resolution process;
- presents resolution plans to the CoC.

25. Rehabilitation vs Liquidation

Rehabilitation/Resolution	**Liquidation**
Objective is revival	Objective is winding up
Business may continue	Assets are realised
Employment may be preserved	Business generally comes to an end
Creditors may receive value through resolution	Assets distributed according to law
Management may be restructured	Company proceeds toward dissolution

26. Historical vs Present Position

SICA Framework	**Present IBC Framework**
SICA, 1985	IBC, 2016
BIFR	NCLT
AAIFR	NCLAT
Sick industrial company	Corporate debtor/default
Rehabilitation scheme	Resolution plan
BIFR-led process	Creditor-driven insolvency process
SICA repealed	Current framework

27. Important Difference: SICA and IBC

SICA

Focused specifically on **industrial sickness**.

IBC

Provides a broader framework for **insolvency and bankruptcy** of corporate persons and other specified persons/entities.

Therefore, the modern law is not limited to traditional industrial companies.

28. Important Case Law

⭐ **Innoventive Industries Ltd. v. ICICI Bank Ltd.**

The Supreme Court explained the object and operation of the IBC and emphasised the importance of a time-bound insolvency resolution framework.

⭐ **Swiss Ribbons Pvt. Ltd. v. Union of India**

The Supreme Court upheld the constitutional validity of major provisions of the IBC and explained that the Code is fundamentally concerned with **resolution and maximisation of value**, while liquidation is a last resort where resolution fails.

These cases are excellent for showing the examiner that you understand the **current law**.

29. Examination Diagram

Draw this:

OLD SICA MODEL

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Industrial Sickness

↓

BIFR

↓

Inquiry

↓

Viable?

↙ ↘

YES **NO**

↓ ↓

Rehabilitation **Winding Up**

PRESENT IBC MODEL

Default

↓

CIRP

↓

NCLT

↓

Committee of Creditors

↓

Resolution Plan

↙ ↘

Approved **No Resolution**

↓ ↓

Revival **Liquidation**

30. Important Provisions to Remember

For the **historical 2022 syllabus/question**, remember:

- **SICA, 1985**
- **BIFR**
- **AAIFR**
- Rehabilitation scheme
- Viability assessment
- Financial restructuring
- Change of management
- Merger/amalgamation
- Winding up where revival fails

For the **current legal position**, remember:

- **IBC, 2016**
- **CIRP**
- **NCLT**
- **NCLAT**

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- **Committee of Creditors**
- **Resolution Professional**
- **Resolution Plan**
- **Liquidation**

31. Conclusion

The rehabilitation of sick industrial companies was historically governed by the **Sick Industrial Companies (Special Provisions) Act, 1985**, under which the BIFR examined industrial sickness and sought to revive viable companies through financial, managerial and structural measures. Where rehabilitation was not feasible, winding up could follow. However, **SICA has been repealed and replaced by the Insolvency and Bankruptcy Code, 2016**. The present law adopts a broader, time-bound insolvency resolution mechanism centred on **NCLT, the Resolution Professional and the Committee of Creditors**, with the objective of rescuing viable businesses and maximising the value of assets.

⭐ **Best LL.M. examination conclusion**

"The law relating to rehabilitation has moved from the specialised SICA-BIFR model to the comprehensive IBC framework. While the terminology and institutions have changed, the underlying objective remains the preservation of viable businesses, protection of stakeholders and maximisation of economic value, with liquidation serving as the alternative where resolution is not possible."

🔥 **2-Minute Revision**

OLD LAW

SICA → BIFR → Rehabilitation

PRESENT LAW

IBC → NCLT → CIRP → Resolution

If resolution fails:

Liquidation

Must remember:

"Viable → Revive; Not viable → Liquidate."

2021 — QUESTION 1

What are the Powers and Functions of the National Company Law Tribunal (NCLT)?

1. Introduction

The **National Company Law Tribunal (NCLT)** is a specialised quasi-judicial body dealing with matters relating to company law and corporate insolvency.
It was constituted by the Central Government under **Section 408 of the Companies Act, 2013** and became operational on **1 June 2016**.
The NCLT consolidated several functions previously exercised by bodies such as the **Company Law Board (CLB), BIFR and AAIFR**, and certain company-law jurisdiction of High Courts.
It also functions as the **Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016 (IBC)** for corporate insolvency matters.

2. Constitution of NCLT — Section 408

Under **Section 408**, the Central Government constitutes the NCLT consisting of:

- a **President**; and
- such number of **Judicial Members and Technical Members** as may be required.

Its jurisdiction comes from the Companies Act and other applicable laws.

3. Nature of NCLT

The NCLT is:

- a **quasi-judicial tribunal**;
- a specialised forum for company-law disputes;
- an adjudicating authority under the IBC for corporate insolvency;
- empowered to pass legally binding orders within its jurisdiction.

Its decisions are appealable to the **National Company Law Appellate Tribunal (NCLAT)**, subject to the statutory framework.

4. Major Powers and Functions of NCLT

A. Oppression and Mismanagement — Sections 241–242

One of the most important functions of NCLT is to provide relief against:

- **oppression of members**, and
- **mismanagement of company affairs**.

Under Section 241, eligible members may approach the Tribunal where the company's affairs are being conducted in a manner prejudicial to members, public interest or the interests of the company.

Powers under Section 242 include:

- regulating future conduct of the company's affairs;
- ordering purchase of shares;
- directing reduction of share capital following purchase;
- restricting transfer or allotment of shares;
- modifying or terminating certain agreements;
- removing directors or managerial personnel;
- recovering undue gains;
- making other orders necessary to bring the oppressive or prejudicial conduct to an end.

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5. Class Action — Section 245

NCLT can deal with **class-action applications** by members or depositors.

Appropriate orders may be made to protect:

- members;
- depositors;
- the company.

This provides collective protection against wrongful or prejudicial conduct.

6. Reduction of Share Capital

NCLT has jurisdiction in relation to schemes for **reduction of share capital** under the Companies Act.

It considers the statutory requirements and protection of creditors before confirming the reduction.

7. Rectification of Register of Members — Section 59

Where the Register of Members contains:

- an incorrect entry;
- wrongful omission;
- unreasonable delay in entering a name; or
- unreasonable delay in removing a name,

the NCLT can order **rectification** under Section 59.

This connects with the **2019 Q6** we already studied.

8. Compromise, Arrangement and Reconstruction

NCLT plays an important role in schemes involving:

- compromise;
- arrangement;
- reconstruction;
- amalgamation;
- merger.

These matters are dealt with under the relevant provisions of the Companies Act.

The Tribunal examines the scheme and protects the interests of:

- shareholders;
- creditors;
- members;
- other stakeholders.

9. Amalgamation and Merger

NCLT has jurisdiction over schemes of:

- amalgamation;
- merger;
- reconstruction.

It may sanction a scheme after considering statutory requirements and stakeholder interests.

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10. Restoration of Company's Name

Where the Registrar removes a company's name from the Register, an aggrieved company or other eligible person may seek restoration before the NCLT under the applicable provisions.

The Tribunal may order restoration where statutory conditions are satisfied.

The NCLT officially identifies **restoration of company names** among its company-law functions.

11. Winding Up

NCLT has jurisdiction over **winding-up proceedings** under the Companies Act.

It may:

- entertain winding-up petitions;
- pass winding-up orders;
- appoint/replace liquidators where authorised;
- supervise the winding-up process;
- make appropriate orders concerning company assets and stakeholders.

The Companies Act specifically provides for Tribunal powers in winding-up matters.

12. Corporate Insolvency under IBC

This is an extremely important **modern function**.

NCLT acts as the **Adjudicating Authority for corporate insolvency resolution proceedings (CIRP)** under the Insolvency and Bankruptcy Code, 2016.

It deals with applications relating to insolvency of corporate persons and passes appropriate orders under the IBC.

13. Personal Guarantors

NCLT also has jurisdiction over insolvency proceedings concerning **personal guarantors to corporate debtors**, under the applicable IBC framework.

14. Powers Regarding Investigation and Company Affairs

The NCLT performs various functions connected with investigation and corporate governance under the Companies Act.

It may exercise powers specifically assigned to it by the Act in relation to company affairs.

15. Power to Pass Orders — Section 420

NCLT may pass appropriate orders after giving the parties a **reasonable opportunity of being heard**.

This reflects the principle of **natural justice**.

16. Procedure Before NCLT — Section 424

Section 424 is important.

NCLT is **not strictly bound by the procedure under the Code of Civil Procedure, 1908**.

Instead, it is guided by:

Principles of Natural Justice

and has power to regulate its own procedure, subject to the Companies Act, IBC and applicable rules.

17. Powers Similar to Civil Court

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For specified matters, NCLT has powers similar to those of a civil court, including powers relating to:

- summoning persons;
- enforcing attendance;
- examining persons on oath;
- requiring production of documents;
- receiving evidence;
- issuing commissions in appropriate cases.

These powers facilitate effective adjudication.

18. Major Areas of NCLT Jurisdiction

For examination, remember this list:

NCLT deals with:

1. Oppression and mismanagement
2. Class actions
3. Reduction of share capital
4. Rectification of Register of Members
5. Compromise and arrangements
6. Mergers and amalgamations
7. Restoration of company name
8. Winding up
9. Corporate insolvency under IBC
10. Insolvency of personal guarantors under applicable IBC provisions

The official NCLT description confirms these core company-law and insolvency functions.

19. NCLT vs NCLAT

This is a useful short distinction.

NCLT	**NCLAT**
Tribunal of first instance for matters within its jurisdiction	Appellate Tribunal
Hears original company-law/insolvency matters	Hears appeals against NCLT orders
Constituted under Section 408	Constituted under Section 410
Orders may generally be appealed to NCLAT	Further statutory appeal lies to Supreme Court on questions of law

20. Importance of NCLT

The NCLT provides a **specialised and unified forum** for company-law and insolvency disputes.

Its objectives include:

- speedy resolution;
- specialised adjudication;

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- protection of stakeholders;
- better corporate governance;
- efficient insolvency resolution;
- reduction of multiplicity of proceedings.

The NCLT itself describes its mandate as providing a unified forum under the Companies Act and IBC while safeguarding shareholders, creditors, employees and other stakeholders.

21. Simple Exam Diagram

Draw this:

NCLT

↓

COMPANY LAW

→ Oppression & Mismanagement
→ Class Action
→ Merger/Amalgamation
→ Reduction of Capital
→ Rectification
→ Restoration
→ Winding Up

↓

IBC

→ Corporate Insolvency
→ Personal Guarantors

22. Important Sections to Remember

Section	Subject
408	Constitution of NCLT
241	Oppression/mismanagement application
242	Powers of Tribunal
245	Class action
59	Rectification of Register
230–232	Compromise, arrangement, merger/amalgamation
248–252	Removal/restoration of company name
270 onwards	Winding up
420	Orders of Tribunal
424	Procedure before Tribunal

23. Conclusion

The National Company Law Tribunal is a specialised adjudicatory institution designed to provide an integrated mechanism for resolving company-law and corporate insolvency

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matters. Its jurisdiction extends from **oppression and mismanagement, mergers and capital reduction to winding up and corporate insolvency**.

⭐ **Best LL.M. conclusion:**

"The NCLT represents a major institutional reform in Indian company law by bringing diverse corporate disputes and insolvency proceedings before a specialised forum. Its powers are intended not merely to adjudicate disputes but also to protect stakeholders, promote corporate governance, facilitate restructuring and ensure effective resolution of corporate insolvency."

🔥 **2-Minute Revision**

408 → NCLT
241–242 → Oppression & Mismanagement
245 → Class Action
59 → Rectification
230–232 → Merger/Arrangement
Winding Up → NCLT
IBC → Corporate Insolvency
424 → Natural Justice + own procedure
Golden line:
"NCLT is the specialised forum for company-law adjudication and the adjudicating authority for corporate insolvency under the IBC."

2021 — QUESTION 3(b)
Explain the Fast-Track Way of Dissolving a Company
1. Introduction
The **Fast-Track Exit (FTE)** mechanism provides a simpler and quicker method for closing a company that is not carrying on business and has no outstanding liabilities.
Under the Companies Act, 2013, the principal statutory provision is **Section 248**, read with the **Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016**.
Today, voluntary applications for removal of a company's name are processed through **C-PACE (Centre for Processing Accelerated Corporate Exit)**. The prescribed application is **Form STK-2**.
2. Meaning of Fast-Track Exit
Fast-track dissolution means:
A simplified procedure for removing the name of an inactive company from the Register of Companies and thereby bringing about its dissolution, without going through the lengthy winding-up process.
It is particularly useful for companies that:

- have ceased operations;
- have no substantial business;
- have discharged their liabilities; and

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- wish to close voluntarily.

3. Statutory Basis

The important provisions are:

Section 248

Power of Registrar to remove the name of a company.

Section 249

Restrictions on making an application.

Section 250

Effect of company being dissolved.

Section 252

Restoration of company name.

The present Section 248 allows a company, after extinguishing its liabilities, to apply for removal of its name by **special resolution or consent of 75% of members in terms of paid-up share capital**.

4. Grounds for Removal of Name

Under **Section 248(1)**, the Registrar may initiate removal where, among other statutory grounds:

1. The company has failed to commence business within one year of incorporation; or
2. The company has not carried on business or operations for **two immediately preceding financial years** and has not applied for dormant status; or
3. Subscribers have not paid the promised subscription and the required declaration has not been filed; or
4. The company is found, after physical verification, not to be carrying on business or operations.

5. Voluntary Application by Company — Section 248(2)

A company itself can apply for removal of its name.

The essential requirements include:

Step 1 — Cease Business

The company should have ceased business/operations in accordance with the statutory requirements.

Step 2 — Extinguish Liabilities

The company must **extinguish all its liabilities** before making the voluntary application.

Step 3 — Approval

The company must obtain:

- a **special resolution**, or
- consent of **75% of members in terms of paid-up share capital**.

Step 4 — Application

The company files the prescribed application, **Form STK-2**, with the prescribed authority/C-PACE.

6. Important Current Compliance Requirement

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Under the amended Rules, before filing the application, the company generally needs to file its **overdue financial statements and annual returns** up to the end of the financial year in which it ceased its business operations.

This is an important current-law point that can improve an LL.M. answer.

7. Declaration and Documents

The application is accompanied by the prescribed declarations and supporting documents, including information concerning:

- assets and liabilities;
- pending litigation;
- liabilities;
- statutory filings;
- closure of business;
- consent/approval for strike-off.

The objective is to ensure that the company is not using the fast-track route to escape its lawful obligations.

8. Registrar/C-PACE Examination

The application is examined by the appropriate authority.

The authority may verify:

- whether statutory requirements are satisfied;
- whether liabilities have been discharged;
- whether filings are complete;
- whether there are objections;
- whether the company is eligible for strike-off.

9. Public Notice

After receiving the application, the Registrar follows the statutory procedure and causes the required public notice to be issued.

This provides an opportunity for interested persons to raise objections.

Section 248 requires the notice to be published in the prescribed manner and in the **Official Gazette**.

10. Removal of Name

If no valid cause is shown against the proposed removal, the Registrar may strike off the company's name from the Register.

The Registrar publishes the final notice.

Result:

On publication of the notice in the Official Gazette, the company stands dissolved.

11. Effect of Dissolution

Once dissolved:

- the company ceases to exist as a legal entity for ordinary purposes;
- its name is removed from the Register;
- however, certain liabilities and statutory consequences continue.

Importantly, dissolution does **not automatically extinguish every liability**.

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Section 248(7) specifically preserves the liability of directors, managers/officers and members in appropriate circumstances.

12. Assets and Liabilities

Before striking off, the Registrar must be satisfied that sufficient provision has been made for:

- realisation of amounts due to the company; and
- payment/discharge of its liabilities and obligations.

The company's assets may remain available for payment of liabilities even after removal of the name.

13. Restrictions — Section 249

A company cannot freely use the strike-off route in certain circumstances.

For example, an application cannot generally be made if, during the previous three months, the company has:

- changed its name;
- shifted its registered office from one State to another;
- disposed of property/rights for value in specified circumstances;
- carried on activities other than those necessary for closure;
- applied for a compromise/arrangement that has not concluded; or
- is being wound up under the Companies Act or IBC.

14. Companies Not Eligible

Certain categories are excluded from the voluntary strike-off procedure.

For example:

Section 8 companies cannot make an application under Section 248(2).

Other exclusions and restrictions are prescribed under the Rules.

15. Restoration of Company — Section 252

Fast-track dissolution is not necessarily the end of the matter.

A company whose name has been struck off can, in appropriate circumstances, seek **restoration** before the NCLT.

Under Section 252, the Tribunal may restore the company's name where statutory conditions are satisfied.

16. Difference Between Fast-Track Exit and Winding Up

Fast-Track Exit	**Winding Up**
Simplified closure mechanism	Formal liquidation process
Mainly for inactive/non-operating companies satisfying conditions	Used where liquidation is required
Name removed from Register	Assets realised and liabilities dealt with through liquidation
Relatively quicker	Generally more elaborate
Section 248	Winding-up provisions

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Fast-Track Exit	Winding Up
Processed through prescribed strike-off mechanism/C-PACE	Liquidator plays central role

17. Fast-Track Procedure — Flow Chart

Draw this in the examination:

Company ceases business

↓

Extinguish liabilities

↓

Clear statutory filings

↓

Special Resolution / 75% consent

↓

Form STK-2

↓

Application to C-PACE

↓

Verification

↓

Public Notice

↓

No valid objection

↓

Name removed from Register

↓

Company dissolved

18. Advantages

1. Simple procedure

Avoids a lengthy liquidation process where appropriate.

2. Cost-effective

Generally less expensive than a full winding-up process.

3. Faster closure

Helps inactive companies exit the corporate register.

4. Reduces compliance burden

An inactive company can formally close rather than continue indefinitely.

5. Cleans corporate records

It helps remove defunct/inactive companies from the Register.

19. Safeguards

The fast-track mechanism does not mean that directors can simply abandon a company.

Safeguards include:

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- extinguishment of liabilities;
- prescribed declarations;
- public notice;
- opportunity for objections;
- verification by authorities;
- continuing liability of directors/officers/members where applicable;
- possibility of restoration.

20. Important Sections to Remember

Section	Subject
248	Removal of name from Register
249	Restrictions on application
250	Effect of company being dissolved
252	Restoration of company
STK-2	Application for removal of name
STK-5/STK-6 etc.	Statutory notices/process forms as applicable

21. Important Current Point — C-PACE

For a **current-law answer**, mention:

C-PACE — Centre for Processing Accelerated Corporate Exit

It was established to centralise and expedite processing of applications for closure/strike-off of companies.

The MCA's current STK-2 instructions expressly describe STK-2 as the application to **C-PACE** for closure and removal of a company's name.

22. Example

Suppose **ABC Pvt. Ltd.** stopped business two years ago.

It has:

- no business operations;
- no outstanding liabilities;
- no pending litigation;
- completed necessary statutory filings.

The shareholders approve closure with the required majority.

The company files **STK-2** with the prescribed documents.

After examination and public notice, if no valid objection exists, the authority may strike off the company's name.

Result:

ABC Pvt. Ltd. → Name removed → Company dissolved

23. Conclusion

The Fast-Track Exit mechanism provides an efficient method for closing eligible inactive companies without subjecting them to the full winding-up process.

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The statutory framework under **Sections 248–252**, together with the Removal of Names Rules, balances **speedy corporate exit** with protection of creditors, members, employees and other stakeholders.

⭐ **Best LL.M. examination conclusion:**

"Fast-Track Exit is a simplified statutory mechanism for the closure of eligible inactive companies. It facilitates speedy removal of their names from the Register while preserving safeguards for creditors and other stakeholders. Thus, the procedure seeks to combine administrative efficiency with corporate accountability."

🔥 **2-Minute Revision**

Remember:

248 → Strike-off

249 → Restrictions

250 → Effect of dissolution

252 → Restoration

STK-2 → Company applies

C-PACE → Processes closure application

Golden flow:

Cease business → Clear liabilities → 75%/Special Resolution → STK-2 → C-PACE/verification → Public notice → Strike-off → Dissolution

2021 — QUESTION 5

What are the Powers and Functions of the Registrar of Companies (ROC)?

1. Introduction

The **Registrar of Companies (ROC)** is an officer appointed by the Central Government to administer and enforce various provisions of the **Companies Act, 2013** within the jurisdiction assigned to the Registrar.

The ROC is mainly responsible for:

- registration and incorporation of companies;
- maintaining statutory records;
- receiving company filings;
- ensuring statutory compliance;
- inspection and investigation-related functions; and
- taking action against companies for specified defaults.

2. Appointment of Registrar — Section 609

Under **Section 609**, the Central Government appoints Registrars, Additional Registrars, Joint Registrars, Deputy Registrars and Assistant Registrars as necessary for administering the Companies Act.

The ROC exercises powers within the jurisdiction assigned to it.

3. Main Functions of ROC

A. Registration and Incorporation of Companies

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One of the most important functions of the ROC is to **register companies**.
The ROC examines incorporation documents and, when statutory requirements are satisfied, registers the company.
After incorporation, the ROC issues the:
Certificate of Incorporation
This gives the company its separate legal existence from the date mentioned in the certificate.
4. Maintaining Register of Companies
The ROC maintains the statutory **Register of Companies** containing prescribed particulars of registered companies.
It is an important source of public corporate information.
5. Receiving Statutory Returns and Documents
Companies are required to file various documents and returns with the ROC.
Examples include:

- annual return;
- financial statements;
- changes in directors;
- changes in registered office;
- allotment of shares;
- charges;
- resolutions and agreements where required;
- other prescribed documents.

The ROC scrutinises and maintains these filings.
6. Registration of Charges
Under **Sections 77 onwards**, charges created by companies over their property or assets are required to be registered.
The ROC:

- registers charges;
- records modifications;
- records satisfaction of charges;
- maintains the Register of Charges.

This provides public notice of encumbrances over company assets.
7. Inspection of Company Documents
The ROC maintains documents filed by companies.
Members of the public may inspect prescribed documents and obtain copies on payment of the prescribed fee.
This promotes:
Transparency + Corporate accountability
8. Power to Seek Information
The ROC can require companies and officers to provide information and documents where authorised under the Companies Act.

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This helps the ROC determine whether the company is complying with statutory requirements.

9. Scrutiny of Company Filings

The ROC may scrutinise documents filed by companies.

If discrepancies or defaults are detected, the ROC may:

- seek clarification;
- require rectification;
- initiate proceedings;
- report matters to the competent authority;
- take other action permitted by law.

10. Power to Call for Information — Section 206

Section 206 is particularly important.

Where the ROC has reason to believe that further information is necessary, it may:

- call for information;
- inspect books and papers;
- issue notices;
- seek explanations from the company and its officers.

Failure to furnish required information can attract statutory consequences.

11. Inspection of Books and Records

The ROC may inspect books and documents in accordance with the Companies Act.

This enables detection of:

- statutory violations;
- fraudulent conduct;
- non-compliance;
- incorrect filings;
- irregular corporate activities.

12. Investigation

The ROC can play an important role in initiating or facilitating investigation into company affairs.

Where circumstances warrant investigation, the matter may be dealt with under the relevant provisions of the Companies Act.

For serious cases, the Central Government may order investigation by the **Serious Fraud Investigation Office (SFIO)** under Section 212.

13. Removal of Names of Companies — Section 248

The ROC has an important power to remove the name of a company from the Register of Companies where statutory conditions are satisfied.

For example, where a company:

- has failed to commence business within the prescribed period; or
- has not been carrying on business or operations for the prescribed period and has not applied for dormant status.

The ROC follows the procedure under **Section 248** and the applicable Rules.

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This is connected with the **Fast-Track Exit question** we just studied.

14. Restoration of Company Name

If a company's name has been struck off, the law provides a mechanism for restoration.

The **NCLT** has jurisdiction under Section 252 to restore the name in appropriate cases.

Thus:

ROC → Strike-off

NCLT → Restoration

This distinction is important for examinations.

15. Certificate of Incorporation

The ROC issues the Certificate of Incorporation after successful registration.

The certificate is important evidence of incorporation.

Once incorporated:

Company becomes a separate legal entity.

16. Change of Registered Office

Companies must notify the ROC regarding changes in their registered office as required by law.

The ROC records the change and updates the company's statutory records.

17. Changes in Directors and Key Managerial Personnel

Companies must file prescribed documents relating to:

- appointment;
- resignation;
- removal;
- changes in particulars

of directors and other officers.

The ROC maintains these records.

18. Registration of Allotment of Shares

Companies are required to file prescribed returns concerning allotment of shares.

The ROC records such information in the company's statutory records.

19. Monitoring Statutory Compliance

The ROC helps ensure compliance with provisions concerning:

- annual filing;
- accounts;
- directors;
- registered office;
- charges;
- share capital;
- statutory registers;
- other corporate requirements.

20. Power to Initiate Prosecution

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Where the Companies Act provides for prosecution or other proceedings for defaults, the ROC may initiate or undertake action in accordance with the statutory framework and the powers assigned to it.

This acts as an enforcement mechanism against persistent non-compliance.

21. Power to Impose/Levy Penalties

The ROC may exercise statutory adjudication or penalty-related powers where specifically authorised under the Companies Act.

Certain defaults may be dealt with through **adjudication of penalties** under Section 454 and the applicable provisions.

22. Reporting Serious Irregularities

If the ROC discovers serious irregularities, fraud or matters requiring higher-level investigation, the matter may be brought to the attention of the:

- Central Government;
- Regional Director;
- SFIO;
- NCLT;
- other competent authority,

depending upon the nature of the matter.

23. ROC and Corporate Transparency

The ROC plays a major role in making corporate information available to stakeholders.

The information maintained by the ROC assists:

- investors;
- creditors;
- shareholders;
- financial institutions;
- regulators;
- the general public.

Therefore:

ROC is an important pillar of corporate transparency.

24. Important Sections to Remember

Section	Subject
7	Incorporation of company
12	Registered office
59	Rectification of Register of Members
77	Registration of charges
92	Annual return
137	Filing of financial statements
206	Power to call for information, inspect and conduct inquiry

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Section	Subject
209	Inspection/investigation-related provisions
210–213	Investigation provisions
248	Removal of company's name
252	Restoration of company name
609	Appointment of Registrars
454	Adjudication of penalties

25. ROC vs NCLT

This is an excellent distinction to write in an LL.M. answer.

ROC	NCLT
Administrative/statutory regulatory officer	Quasi-judicial Tribunal
Handles registration and corporate filings	Adjudicates specified company-law matters
Maintains company records	Passes judicial orders
Registers charges	Deals with disputes involving charges in appropriate cases
Can initiate strike-off under Section 248	Can order restoration under Section 252
Receives annual returns and accounts	Deals with oppression/mismanagement
Performs inspection/inquiry functions	Deals with winding up and insolvency matters

26. Example

Suppose **ABC Pvt. Ltd.** fails to file its annual returns and financial statements for several years.

The ROC may:

1. issue notices;
2. call for information;
3. examine the company's compliance;
4. initiate appropriate statutory action;
5. where statutory conditions are satisfied, initiate the strike-off process.

Thus, ROC acts as an important **compliance and regulatory authority**.

27. Importance of ROC

The ROC performs several important functions:

1. Corporate registration

Ensures only legally compliant entities are registered.

2. Record maintenance

Maintains official corporate records.

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3. Transparency

Makes prescribed company information available.

4. Compliance

Monitors statutory filings.

5. Investor protection

Provides publicly available corporate information.

6. Enforcement

Takes action against statutory defaults.

7. Corporate exit

Facilitates removal of eligible inactive companies.

28. Examination Diagram

Draw this:

REGISTRAR OF COMPANIES

↓

INCORPORATION

↓

REGISTER & RECORDS

↓

ANNUAL RETURNS / ACCOUNTS

↓

CHARGES

↓

INSPECTION / INQUIRY

↓

COMPLIANCE / PENALTIES

↓

STRIKE-OFF

This diagram can help you score extra presentation marks.

29. Conclusion

The Registrar of Companies is a key statutory authority under the Companies Act, 2013. The ROC performs both **administrative and regulatory functions**, ranging from incorporation and maintenance of corporate records to inspection, compliance enforcement and removal of names from the Register.

The ROC therefore plays a vital role in ensuring:

"Transparency, statutory compliance and accountability in corporate administration."

⭐ **Best LL.M. conclusion**

"The Registrar of Companies is not merely a record-keeping authority; it is an important instrument of corporate regulation. Through registration, maintenance of records, scrutiny of filings, inspection, inquiry and enforcement, the ROC contributes substantially to transparency, investor protection and sound corporate governance."

🔥 **2-Minute Revision**

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Remember **ROC = R-I-C-E-S**

R → Registration

I → Inspection & inquiry

C → Corporate records & charges

E → Enforcement/compliance

S → Strike-off

Most important sections:

7 → Incorporation

77 → Charges

92 → Annual Return

137 → Financial Statements

206 → Information/Inspection/Inquiry

248 → Strike-off

252 → Restoration

609 → Registrar

Golden distinction:

ROC = Registers, Records & Regulatory Compliance

NCLT = Tribunal & Adjudication

2021 — QUESTION 7

What are the Provisions Relating to Investigation of Company Affairs?

1. Introduction

The **Companies Act, 2013** contains detailed provisions for investigation into the affairs of a company where there are grounds to suspect fraud, mismanagement, unlawful conduct or other circumstances affecting the interests of members, creditors or the public.

The principal provisions are found in **Sections 206 to 229** of the Companies Act, 2013.

The investigation mechanism is intended to ensure:

- corporate transparency;
- prevention of fraud;
- protection of shareholders and creditors;
- detection of mismanagement;
- enforcement of company law.

2. Preliminary Inquiry — Section 206

The Registrar of Companies (ROC) may seek information and inspect documents where necessary.

Under **Section 206**, the Registrar may:

- call for information;
- inspect books and papers;
- require explanations;
- conduct inquiry into the affairs of the company.

Example

If a company's filings contain suspicious transactions, the ROC may call upon the company to produce relevant books and documents.

3. Inspection of Books and Documents

The Registrar may inspect the company's:

- books of account;
- registers;
- returns;
- financial statements;
- other relevant documents.

The purpose is to determine whether the company is complying with the Companies Act.

4. Investigation by Central Government — Section 210

Where the circumstances justify a deeper investigation, the **Central Government may order an investigation into the affairs of a company**.

It may do so:

1. on receipt of a report from the Registrar or inspector;
2. on receiving information suggesting that the company's affairs require investigation;
3. where it is necessary in the public interest.

5. Investigation by Tribunal — Section 213

The **NCLT** may order investigation into a company's affairs in circumstances prescribed by Section 213.

This can arise where:

- members make the required application;
- there are circumstances suggesting fraudulent or unlawful conduct;
- persons concerned with management have been guilty of fraud, misfeasance or misconduct;
- the company has been managed in a manner prejudicial to members or public interest.

The Tribunal may appoint inspectors to investigate.

6. Investigation on Application by Members

The Companies Act provides a mechanism by which eligible members can seek investigation. The statutory requirements regarding:

- minimum number of members;
- percentage of shareholding; or
- other prescribed conditions

must be satisfied.

This prevents frivolous investigation applications.

7. Investigation by SFIO — Section 212

One of the most important provisions is **Section 212**, dealing with the **Serious Fraud Investigation Office (SFIO)**.

The Central Government may assign investigation of a company's affairs to the SFIO in the circumstances prescribed by law.

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SFIO

Serious Fraud Investigation Office

It is a specialised agency dealing with serious corporate fraud.

8. When SFIO Investigation May Be Ordered

The Central Government may assign investigation to SFIO where it considers investigation necessary, including circumstances involving:

- receipt of a report from the Registrar/inspector;
- special resolution by the company;
- public interest;
- a request from a Central Government department.

Once the investigation is assigned to SFIO, the statutory consequences under Section 212 apply.

9. Investigation by Inspectors

When investigation is ordered, the Central Government appoints one or more **inspectors**.

The inspectors investigate the company's affairs and prepare a report.

They may examine:

- directors;
- officers;
- employees;
- agents;
- other persons connected with the company.

10. Powers of Inspectors — Section 217

Inspectors have substantial powers to conduct the investigation.

They may:

- require production of documents;
- examine persons;
- require information;
- inspect relevant records;
- question officers and employees;
- obtain necessary evidence.

The company and persons connected with it are required to cooperate as provided by law.

11. Production of Documents

Inspectors can require relevant books and documents to be produced.

These may include:

- accounting records;
- agreements;
- correspondence;
- registers;
- financial records;
- electronic records.

Failure to comply can attract statutory consequences.

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12. Examination on Oath

Inspectors have powers to examine persons in connection with the investigation.

They may require persons to answer questions and provide relevant information in accordance with the statutory procedure.

13. Investigation Report — Section 223

After completing the investigation, the inspector prepares a **report**.

The report is submitted to the Central Government.

The Government may take appropriate action based on the findings.

14. Action on Investigation Report — Section 224

Where the investigation report reveals:

- fraud;
- misconduct;
- misfeasance;
- unlawful conduct;

appropriate legal action may be initiated.

The Government may also direct further proceedings where necessary.

15. Prosecution

If the investigation reveals offences, the persons responsible may face:

- prosecution;
- penalties;
- civil liability;
- recovery proceedings;
- disqualification or other statutory consequences,

depending upon the offence.

16. Protection of Employees

The investigation provisions are not intended to punish innocent employees.

Employees and officers are required to cooperate with lawful investigation, but the Act provides protections and procedural safeguards.

17. Investigation of Ownership — Section 216

The Central Government may appoint inspectors to investigate and report on:

- membership;
- ownership of shares;
- control;
- beneficial interests;
- persons financially interested in the company.

This can help uncover the real persons controlling a company.

18. Investigation of Related Companies

Where necessary, an investigation may extend to other companies or bodies corporate connected with the company under investigation.

This is important where corporate structures are used to conceal:

- ownership;

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- diversion of funds;
- fraudulent transactions;
- related-party arrangements.

19. Search and Seizure

Under the statutory framework, appropriate authorities may obtain orders concerning search and seizure of relevant books and papers where necessary for investigation.
This is particularly significant in serious fraud investigations.

20. Inspector's Report as Evidence

The investigation report can become an important basis for:

- prosecution;
- regulatory action;
- recovery;
- other legal proceedings.

The report may also assist authorities in identifying persons responsible for corporate wrongdoing.

21. Investigation vs Inspection

This distinction is important.

Inspection	**Investigation**
Generally preliminary	More detailed and comprehensive
Often conducted by ROC	May involve appointed inspectors/SFIO
Examines compliance	Examines deeper wrongdoing/affairs
May lead to investigation	Can lead to prosecution/action
Section 206 is important	Sections 210 onwards

Easy memory:

Inspection = preliminary scrutiny

Investigation = detailed examination

22. Investigation vs Audit

Do not confuse investigation with statutory audit.

Audit

Primarily examines financial statements and expresses an audit opinion according to auditing standards.

Investigation

Seeks to discover:

- fraud;
- misconduct;
- unlawful conduct;
- mismanagement;
- the persons responsible.

Thus:**Audit = financial assurance**

Investigation = fact-finding into suspected wrongdoing

23. Important Sections

Section	Subject
206	Power to call for information, inspect and inquire
207	Conduct of inspection and inquiry
208	Report on inspection
210	Investigation by Central Government
211	Establishment of SFIO
212	Investigation by SFIO
213	Investigation ordered by Tribunal
214	Security for costs
216	Investigation of ownership
217	Procedure and powers of inspectors
218	Protection of employees during investigation
219	Investigation of related companies
223	Inspector's report
224	Actions on inspector's report
226	Expenses of investigation
229	Penalty for furnishing false statement

24. Role of ROC, Central Government, NCLT and SFIO

This is an excellent way to present the answer.

ROC

Preliminary information + inspection + inquiry

↓

Central Government

Orders investigation where statutory conditions exist

↓

NCLT

Can order investigation under Section 213

↓

Inspector / SFIO

Detailed investigation

↓

Report

↓

Government / Courts

Appropriate legal action

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25. Example

Suppose ABC Ltd. shows huge profits in its financial statements, but the ROC discovers:

- suspicious related-party transactions;
- unexplained diversion of funds;
- false corporate records.

The ROC may seek information under **Section 206**.

If the matter appears serious, the Central Government may order an investigation.

If it involves serious corporate fraud, the matter may be assigned to **SFIO under Section 212**.

The investigators examine records, question relevant persons and submit their report.

If offences are established, prosecution or other legal action may follow.

26. Importance of Investigation

Investigation provisions serve several purposes:

1. Prevention of corporate fraud

Detects fraudulent activities.

2. Protection of investors

Protects shareholders from manipulation.

3. Protection of creditors

Helps identify diversion or misuse of corporate assets.

4. Corporate governance

Promotes responsible management.

5. Public interest

Serious corporate fraud can affect employees, investors, financial institutions and the economy.

27. Important Case Law

For an LL.M. answer, you may mention:

Barium Chemicals Ltd. v. Company Law Board

The Supreme Court examined the statutory power to order investigation and emphasised that the statutory conditions and relevant material must support the exercise of the power.

This is a useful case when discussing **government-ordered investigation**.

28. Examination Diagram

Draw:

SUSPICION / INFORMATION

↓

ROC — Section 206

Information / Inspection / Inquiry

↓

Central Government — Section 210

Investigation

OR

NCLT — Section 213

Investigation

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↓

Inspector / SFIO — Section 212

Detailed investigation

↓

Investigation Report

↓

Prosecution / Recovery / Regulatory Action

29. Conclusion

The Companies Act, 2013 provides a comprehensive framework for investigation of company affairs. The process can begin with **inspection and inquiry by the ROC**, develop into formal investigation by the Central Government or NCLT, and in serious fraud cases may involve the **SFIO**.

The purpose is not merely to punish wrongdoing but also to protect:

- shareholders;
- creditors;
- employees;
- investors;
- the public interest.

⭐ **Best LL.M. conclusion:**

"The investigation provisions of the Companies Act, 2013 constitute an important mechanism for ensuring corporate accountability. By empowering the Registrar, Central Government, NCLT, inspectors and SFIO to investigate corporate affairs, the Act seeks to detect fraud, prevent mismanagement and protect stakeholders while ensuring that corporate powers are exercised in accordance with law."

🔥 **2-Minute Revision**

Remember the sequence:

206 → ROC information/inspection/inquiry

210 → Central Government investigation

212 → SFIO

213 → NCLT investigation

216 → Ownership investigation

217 → Inspector's powers

223 → Inspector's report

224 → Action on report

Golden line:

"206 starts the inquiry; 210/213 enable formal investigation; 212 brings in SFIO for serious fraud; 223–224 deal with the report and subsequent action."

2021 — QUESTION 8

Who are Contributories? Explain their Liability During Winding Up of a Company

1. Introduction

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When a company is wound up, its assets are collected and realised and its liabilities are paid according to law. The persons who may be required to contribute towards the assets of the company are known as **contributories**.

The principal provisions are found in **Sections 272 onwards** of the Companies Act, 2013, read with the winding-up framework.

Contributory = A person liable to contribute to the assets of a company in the event of winding up.

2. Definition of Contributory

Under **Section 2(26)** of the Companies Act, 2013:

A **contributory** means a person liable to contribute to the assets of a company in the event of its being wound up.

Thus, the term is wider than merely "shareholder."

3. Who Can Be a Contributory?

Contributories may broadly include:

1. **Present members/shareholders**
2. **Past members**, subject to statutory conditions
3. Persons who are legally liable to contribute to the company's assets

The liability depends upon the nature of the person's membership and the type of company.

4. Present Members

A person whose name is on the Register of Members at the relevant time is generally a **present member**.

If the company has unpaid amounts on its shares, the member may be required to contribute the unpaid amount, subject to the statutory limits.

Example

A holds 1,000 shares of ₹10 each.

He has already paid ₹7 per share.

Unpaid amount:

₹3 × 1,000 = ₹3,000

In winding up, subject to the applicable law, A's liability may extend to the unpaid amount.

5. Past Members

A former member may, in certain circumstances, be liable as a contributory.

However, this liability is **not unlimited**.

The Companies Act imposes specific statutory conditions on the liability of past members.

Therefore, a person who transferred shares before winding up is not automatically liable merely because he was once a shareholder.

6. Liability of Members of a Company Limited by Shares

This is the most important point.

In a company limited by shares, a member's liability is generally limited to:

The amount, if any, unpaid on the shares held by him.

Example

A owns 500 shares of ₹10 each.

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He has paid ₹8 per share.

Unpaid amount:

₹2 × 500 = ₹1,000

His liability in winding up may extend to the unpaid **₹1,000**, subject to the applicable provisions.

7. Company Limited by Guarantee

In a company limited by guarantee, the liability of a member is limited to:

The amount guaranteed by him in the memorandum, subject to the statutory conditions.

Example

B has guaranteed ₹20,000.

If the company is wound up and the statutory conditions require contribution, B's liability may extend to the guaranteed amount.

8. Unlimited Company

In an **unlimited company**, the liability of members is not limited by the amount unpaid on shares.

A member may therefore have substantially greater liability towards the company's debts, subject to the provisions of the Act.

9. List of Contributories

During winding up, the liquidator prepares the appropriate **list of contributories**.

The list identifies persons who may be required to contribute to the company's assets.

It assists in determining:

- who is liable;
- the extent of liability;
- amounts payable.

10. Liability to Contribute

The fundamental principle is:

A contributory is liable only to the extent imposed by law.

For a company limited by shares, the liability generally corresponds to the **unpaid amount on shares**.

The contributory is not ordinarily required to contribute more merely because the company has large debts.

11. Liability of Present and Past Members

A useful examination distinction is:

Present Member

Usually liable according to the unpaid amount on his shares or guarantee.

Past Member

May be liable only where the statutory conditions for past-member liability are satisfied.

Therefore:

Present membership does not mean unlimited liability.

12. Order of Liability

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The winding-up process determines the persons and amounts from whom contribution may be called.

The liquidator examines:

- shareholding;
- amount paid;
- amount unpaid;
- transfer history;
- guarantee obligations;
- other statutory liabilities.

13. Calls on Contributories

Where money is required to meet the company's liabilities and winding-up expenses, the liquidator may make the necessary calls/contribution in accordance with the statutory procedure.

The purpose is to collect the amount necessary to meet the company's lawful obligations.

14. Rights of Contributories

A contributory is not merely a person with liability.

Depending upon the circumstances, contributories may have rights such as:

- inspection of relevant winding-up records;
- participation in proceedings as permitted by law;
- challenging improper conduct of liquidation;
- receiving surplus, if any, after all liabilities are discharged and subject to their legal entitlement.

15. Contributory vs Creditor

This distinction is useful.

Contributory	**Creditor**
May be liable to contribute to company assets	Company owes money to creditor
Usually member/past member or person legally liable to contribute	External claimant/debt holder
Liability may arise during winding up	Has a claim against company
May ultimately receive surplus after debts are paid	Entitled to payment according to priority and applicable insolvency/winding-up law

16. Contributory vs Shareholder

These terms are not always identical.

Shareholder

A person who holds shares in the company.

Contributory

A person who is **liable to contribute to the assets of the company in winding up**.

Thus:

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Every contributory may be a member or otherwise legally liable, but the concept of contributory is specifically linked to winding-up liability.

17. Importance of Contributories

The concept is important because the company's assets may not be sufficient to meet all its liabilities.

The law therefore provides a mechanism for obtaining the amount that members are legally obliged to contribute.

This ensures:

- proper liquidation;
- payment of creditors;
- protection of stakeholders;
- enforcement of limited liability according to law.

18. Example

Suppose XYZ Ltd. is a company limited by shares.

A holds:

1,000 shares × ₹10 = ₹10,000

Amount already paid:

₹8,000

Amount unpaid:

₹2,000

During winding up, the company has insufficient assets to meet its lawful liabilities.

Subject to the winding-up process, A's contribution may extend to the **₹2,000 unpaid amount**.

A would not ordinarily be personally liable for the company's entire debt merely because he is a shareholder.

This illustrates:

Limited liability = liability limited to the unpaid amount on shares.

19. Important Principle — Limited Liability

The concept of contributory liability demonstrates the balance between:

Corporate personality

The company is a separate legal person.

AND

Limited liability

Members are generally protected from personal liability beyond the statutory limit.

Therefore:

Winding up does not automatically make shareholders personally liable for all corporate debts.

20. Important Statutory Provisions

For examination purposes, remember the winding-up provisions concerning:

- **Section 2(26)** → Definition of contributory
- provisions relating to **liquidator and winding up**

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- provisions concerning the **list of contributories**
- provisions relating to **calls/contribution**
- provisions concerning **past and present members**

Because the winding-up framework has been significantly affected by the **Insolvency and Bankruptcy Code, 2016**, always distinguish Companies Act winding-up from corporate insolvency resolution under the IBC when writing a current-law answer.

21. Companies Act Winding Up vs IBC

This is a useful modern point.

Companies Act

Provides the statutory framework for **winding up by Tribunal** in the circumstances permitted by the Act.

IBC

Provides the framework for **corporate insolvency resolution and liquidation** for corporate persons under the Insolvency and Bankruptcy Code.

Therefore, do not write that every financially distressed company automatically goes through Companies Act winding up.

22. Examination Diagram

Draw this:

COMPANY WOUND UP

↓

Liquidator

↓

Identify Contributories

↓

Determine Liability

↓

Call for Unpaid Contribution

↓

Collect Amount

↓

Use Assets + Contributions

↓

Pay Liabilities

↓

Final Distribution / Dissolution

23. Important Distinctions

Present Member

Current member → possible liability

Past Member

Former member → liability only under statutory conditions

Limited Company

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Liability generally limited
Unlimited Company
Liability not limited in the same manner
24. Conclusion
A contributory is a person legally liable to contribute to the assets of a company in the event of winding up. The concept is particularly important in companies limited by shares because it determines the extent to which members may be required to contribute unpaid amounts on their shares.
The law therefore balances two objectives:
Protection of members through limited liability
and
Protection of creditors through enforcement of the member's statutory contribution.
⭐ **Best LL.M. examination conclusion**
"The doctrine of contributories is an essential component of the winding-up mechanism. It ensures that persons who are legally bound to contribute do so within the limits prescribed by law, while at the same time preserving the principle of limited liability. Thus, the law of contributories balances the interests of shareholders with the legitimate claims of creditors."
🔥 **2-Minute Revision**
CONTRIBUTORY = PERSON LIABLE TO CONTRIBUTE
Remember:
Present member → unpaid amount may be called
Past member → liability subject to statutory conditions
Limited by shares → unpaid amount on shares
Limited by guarantee → guaranteed amount
Unlimited company → liability not limited in the same manner
Golden line:
"A shareholder is not liable for all company debts; in a company limited by shares, the contributory's liability is generally confined to the unpaid amount on his shares."
2024 — QUESTION 1
What is meant by Statutory Meeting of a Company? State the Consequences of Not Holding a Statutory Meeting.
⚠️ **Important current-law note**
This is a **historical company-law question**. The concept of a compulsory **statutory meeting** belonged to the **Companies Act, 1956, Section 165**. The Companies Act, 2013 **does not contain a corresponding statutory-meeting requirement**. Therefore, for your LL.M. examination, write the traditional answer below, but add the current-law note at the end.
The old Section 165 specifically required certain public companies to hold a statutory meeting, and prescribed consequences for default.
1. Meaning of Statutory Meeting

A **statutory meeting** was the first general meeting of the members of certain public companies, held after incorporation and commencement of business.
Its main purpose was to acquaint the members with:

- the formation of the company;
- the shares allotted;
- the money received;
- the preliminary expenses;
- the contracts entered into;
- the financial position of the company.

It was therefore an important meeting during the early life of a company.

2. Statutory Provision — Section 165, Companies Act, 1956

Under **Section 165 of the Companies Act, 1956**, every company limited by shares and every company limited by guarantee and having a share capital was required to hold a statutory meeting, subject to the statutory conditions.

Important:

Private companies were excluded from this requirement.
The old Act expressly provided that Section 165 did not apply to a private company.

3. When Was the Statutory Meeting Held?

The statutory meeting had to be held:

Not less than one month and not more than six months from the date on which the company became entitled to commence business.

This time limit is an important point for examination.

Remember:

1 month → minimum
6 months → maximum

4. Notice of Statutory Meeting

Notice of the meeting had to be sent to the members entitled to receive notice.
The notice informed members about:

- date;
- time;
- place;
- purpose of the meeting.

5. Statutory Report

One of the most important features of the statutory meeting was the **Statutory Report**.
The Board of Directors had to prepare a statutory report containing prescribed information.
The report had to be sent to members within the prescribed period before the meeting.

6. Contents of Statutory Report

The statutory report generally contained information relating to:

1. Shares allotted

Particulars of shares allotted and the consideration received.

2. Cash received

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Details of cash received by the company in respect of shares.

3. Receipts and payments

An account showing receipts and payments of the company up to the prescribed date.

4. Preliminary expenses

Details of preliminary expenses.

5. Directors and officers

Particulars regarding directors and other officers.

6. Contracts

Particulars of important contracts requiring disclosure.

7. Underwriting contracts

Details of underwriting contracts where applicable.

8. Calls

Details regarding calls made, received and unpaid.

7. Purpose of Statutory Meeting

The statutory meeting served several purposes.

A. To inform shareholders

Members obtained information about the company's early activities.

B. To ensure transparency

The promoters and directors had to disclose important preliminary matters.

C. To protect shareholders

Members could question the management.

D. To examine financial position

Members could understand the initial financial position.

E. To discuss formation of company

The meeting enabled discussion of the company's incorporation and commencement of business.

8. Business at the Statutory Meeting

The members could discuss matters relating to:

- formation of the company;
- allotment of shares;
- preliminary expenses;
- contracts;
- financial position;
- management;
- other matters arising from the statutory report.

However, the statutory meeting was not intended to replace the company's normal annual general meeting.

9. Difference Between Statutory Meeting and AGM

Statutory Meeting	**Annual General Meeting**
Held only once	Held every year

Statutory Meeting	Annual General Meeting
Early stage of company's life	Regular annual meeting
Mainly applicable under old law to specified public companies	General statutory requirement under current law, subject to exceptions
Held after commencement entitlement	Held annually
Based on statutory report	Deals with annual business
Historical concept under Companies Act, 1956	Current Companies Act, 2013 framework

Under the Companies Act, 2013, **Section 96** governs the Annual General Meeting.

10. Consequences of Not Holding Statutory Meeting

Under the old Companies Act, failure to comply with the statutory-meeting requirements constituted a **default**.

The directors/officers responsible could be subject to statutory consequences.

Under the old Section 165, default in complying with the statutory-meeting requirements attracted a **fine which could extend to ₹5,000** for every director or other officer in default.

11. Liability of Directors

The directors were responsible for ensuring that:

- the statutory meeting was properly convened;
- the statutory report was prepared;
- the statutory report was circulated;
- statutory requirements were complied with.

Failure could result in statutory liability.

12. Effect on Company

Failure to hold the statutory meeting did **not automatically mean that the company ceased to exist**.

The company continued as a legal entity, but the company and responsible officers could face the consequences prescribed by the Act.

13. Can Court Order Winding Up for Default?

Under the old law, persistent statutory defaults could have serious consequences and could become relevant in winding-up proceedings.

However, it is important **not to write that failure to hold the statutory meeting automatically dissolved the company**.

Correct position:

Non-holding of the statutory meeting was a statutory default, attracting the consequences provided by the Act; it did not by itself automatically dissolve the company.

14. Current Position Under Companies Act, 2013

This is an important point because your question is from **2024**.

The **Companies Act, 2013 does not contain the old Section 165 statutory-meeting requirement**.

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Instead, the current Act contains provisions relating to:

- Board meetings;
- general meetings;
- Annual General Meeting;
- Extraordinary General Meeting;
- statutory records and filings.

For example, **Section 96** governs AGM requirements, while **Section 99** provides punishment for default in complying with Sections 96–98.

Therefore, if the examiner expects the question according to the **traditional syllabus**, write the Section 165 answer. Then add the following paragraph:

⭐ **Current-law note**

"It may be noted that the statutory meeting requirement under Section 165 of the Companies Act, 1956 has not been carried forward into the Companies Act, 2013. The present Act instead regulates annual general meetings and other meetings under its relevant provisions."

This will make your answer legally up-to-date.

15. Simple Example

Suppose ABC Ltd. was incorporated as a public company under the old Companies Act, 1956 framework and became entitled to commence business.

It was required to hold its statutory meeting within the prescribed period.

Before the meeting, it prepared and circulated its statutory report containing:

- shares allotted;
- money received;
- preliminary expenses;
- contracts;
- directors' particulars;
- other prescribed information.

Members then attended the meeting and discussed the report.

If the company failed to comply, the directors/officers responsible could face the statutory penalty.

16. Examination Diagram

Draw this:

INCORPORATION

↓

ENTITLED TO COMMENCE BUSINESS

↓

1 MONTH — 6 MONTHS

↓

STATUTORY MEETING

↓

STATUTORY REPORT

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↓

Members' Discussion

↓

Transparency & Accountability

↓

Default → Statutory Consequences

17. Important Points to Remember

Statutory Meeting

Old Companies Act, 1956 — Section 165

Applicable mainly to:

Specified public companies

Time:

Not less than 1 month and not more than 6 months

from entitlement to commence business.

Main document:

Statutory Report

Purpose:

Inform members about initial affairs of company

Default:

Statutory penalty under old Section 165

Current law:

No statutory meeting requirement under Companies Act, 2013

⭐ **15-Mark Answer Structure**

For your exam, write in this order:

1. **Introduction**
2. **Definition**
3. **Section 165 — Companies Act, 1956**
4. **Companies required to hold it**
5. **Time of meeting**
6. **Notice**
7. **Statutory Report**
8. **Contents of report**
9. **Purpose**
10. **Business at meeting**
11. **Consequences of default**
12. **Current position under Companies Act, 2013**
13. **Conclusion**

⭐ **Best concluding sentence:**

"The statutory meeting was an important mechanism under the Companies Act, 1956 for ensuring early disclosure and accountability to shareholders. However, the Companies Act,

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2013 has discontinued this specific requirement and instead provides a modern framework governing general meetings, including the Annual General Meeting."

🔥 **1-Minute Revision**

Section 165 — Old Act

Specified public company

↓

1–6 months

↓

Statutory Report

↓

Initial affairs disclosed

↓

Members discuss

↓

Default → statutory penalty

Most important:

"Statutory meeting is a historical concept under the Companies Act, 1956; it is not a separate compulsory meeting under the Companies Act, 2013."

2024 — QUESTION 4

How are Directors Appointed and Removed? Explain the Duties and Liabilities of Directors

1. Introduction

A **director** is a person appointed to the Board of Directors of a company. The Board is collectively responsible for the management and direction of the company's affairs.

Under **Section 149 of the Companies Act, 2013**, every company must have a Board consisting of individuals as directors.

Directors occupy a **fiduciary position** and must act in the interests of the company and its stakeholders within the framework of law.

PART I — APPOINTMENT OF DIRECTORS

2. Minimum Number of Directors — Section 149

The minimum number is:

- **Public company — 3 directors**
- **Private company — 2 directors**
- **One Person Company — 1 director**

The maximum number is generally **15 directors**, unless a company appoints more than 15 by passing a **special resolution**.

3. First Directors — Section 152

The subscribers to the Memorandum are deemed to be the first directors where the Articles do not provide for the appointment of first directors.

In the case of an OPC, the individual nominated in accordance with the statutory framework may become the first director.

4. Appointment by Shareholders

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Under **Section 152**, directors are generally appointed by the company in a **general meeting**. A proposed director must satisfy the statutory requirements and give the necessary consent and declarations.

5. Director Identification Number — DIN

A person appointed as a director must have a valid **Director Identification Number (DIN)** in accordance with the Act.

The required particulars are filed with the Registrar.

6. Consent to Act as Director

A person appointed as director must give consent to act as director in the prescribed manner.

The company must file the required particulars with the Registrar within the prescribed time.

7. Independent Directors — Section 149

Certain prescribed classes of companies are required to have **independent directors**.

An independent director is expected to exercise independent judgment and not be subject to relationships or circumstances that compromise independence.

The Act lays down specific eligibility requirements.

8. Woman Director

Certain prescribed classes of companies are required to appoint at least **one woman director**.

This promotes diversity and representation on corporate boards.

9. Resident Director

Under Section 149(3), every company must have at least one director who has stayed in India for the prescribed period during the relevant financial year.

This ensures a degree of continuing presence of management in India.

10. Additional Director — Section 161

The Board may appoint an **Additional Director** if authorised by the Articles.

Such director generally holds office up to the date of the next AGM or the last date on which the AGM should have been held, subject to the Act.

11. Alternate Director

Where permitted by the Articles and the statutory conditions are satisfied, the Board may appoint an **Alternate Director** to act during the absence of a director from India for the prescribed period.

12. Nominee Director

A **nominee director** may be appointed where the Articles or applicable law permits nomination by:

- financial institutions;
- government;
- other specified persons/bodies.

The nominee represents the interests for which the nomination was made but must still comply with the statutory duties of a director.

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PART II — REMOVAL OF DIRECTORS

13. Removal by Shareholders — Section 169

A company may remove a director before expiry of his period of office by passing an **ordinary resolution**, after giving the director a reasonable opportunity of being heard.

Exception:

A director appointed by the **Tribunal under Section 242** cannot be removed under this provision.

14. Special Notice

A proposal to remove a director under Section 169 requires the prescribed **special notice**.

The company must follow the statutory procedure before putting the resolution to vote.

15. Opportunity of Being Heard

The director proposed to be removed has the right to make a representation.

The company must give reasonable opportunity to the director to be heard.

This reflects the principle of **natural justice**.

16. Vacation of Office — Section 167

A director's office becomes vacant in circumstances prescribed by Section 167.

Examples include:

- incurring statutory disqualification;
- absence from all Board meetings for the prescribed period;
- violation of certain statutory requirements;
- conviction or other specified circumstances.

17. Disqualification — Section 164

A person may be disqualified from appointment as director in circumstances specified by Section 164.

Examples include:

- unsound mind as declared by a competent court;
- insolvency;
- certain convictions;
- failure to pay calls on shares in the prescribed circumstances;
- certain company filing defaults.

PART III — DUTIES OF DIRECTORS

18. Section 166 — Statutory Duties

Section 166 is extremely important for examination.

A director shall:

1. Act according to the Articles

The director must act in accordance with the company's Articles.

2. Act in good faith

The director must act in good faith to promote the objects of the company for the benefit of:

- members as a whole;
- the company;
- other relevant stakeholders as prescribed by law.

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3. Exercise due care, skill and diligence

A director must exercise:

- reasonable care;
- skill;
- diligence;
- independent judgment.

19. Avoid Conflict of Interest

A director must not place himself in a position where his personal interests conflict with the interests of the company.

Example:

A director uses confidential company information to make a personal profit.

Such conduct may violate his fiduciary obligations.

20. No Undue Gain

A director must not obtain an **undue gain or advantage** for:

- himself;
- his relatives;
- partners;
- associates.

If he makes an undue gain, he is liable to compensate the company to the extent prescribed by law.

21. No Assignment of Office

A director cannot assign his office to another person.

Any purported assignment of office is generally **void**.

22. Duties Toward Stakeholders

Directors must consider the interests of:

- the company;
- shareholders;
- employees;
- creditors;
- community;
- environment,

as required by Section 166 and the nature of their statutory responsibilities.

PART IV — LIABILITIES OF DIRECTORS

23. Civil Liability

Directors may incur civil liability for:

- breach of fiduciary duty;
- negligence;
- breach of statutory duties;
- misfeasance;
- wrongful acts;
- unauthorised transactions.

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They may be required to compensate the company or other persons where the law permits.

24. Liability for Fraud

Where a director participates in or is responsible for fraudulent conduct, serious civil and criminal consequences may arise under the Companies Act and other applicable laws.

Fraud may result in:

- prosecution;
- fines;
- imprisonment where prescribed;
- compensation;
- disqualification.

25. Liability for Misstatements in Prospectus

Directors can incur liability for **misstatements in a prospectus** under the applicable provisions of the Companies Act.

Depending on the circumstances, liability may be:

- civil; and/or
- criminal.

26. Liability for Company Defaults

Directors and officers may be liable for statutory defaults where the relevant provision specifically imposes responsibility upon them.

However, an important examination point is:

A director is not automatically personally liable for every debt or obligation of the company.

The company is a separate legal entity.

Personal liability generally arises where:

- the statute specifically provides it;
- the director commits a wrongful act;
- there is fraud;
- the director gives a personal guarantee;
- the director acts outside lawful authority.

27. Liability for Unlawful Acts

A director who knowingly participates in unlawful corporate activities may face appropriate statutory consequences.

Examples include:

- fraudulent transactions;
- falsification of records;
- violation of disclosure requirements;
- improper related-party transactions.

28. Fiduciary Position of Directors

Directors are often described as occupying a **fiduciary position** because they exercise powers for the benefit of the company.

They must therefore:

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- act honestly;
- avoid conflicts;
- not misuse corporate property;
- not make secret profits;
- exercise powers for proper purposes.

29. Important Case Law

⭐ **Regal (Hastings) Ltd. v. Gulliver**

Directors were held accountable for profits obtained through their position.

Principle:

A fiduciary cannot retain an unauthorised profit obtained by reason of his position.

⭐ **Percival v. Wright**

The case is traditionally associated with the principle that directors generally owe their fiduciary duties to the **company**, rather than automatically to individual shareholders.

30. Appointment vs Removal

Appointment	**Removal**
Mainly Section 152	Section 169
Generally by members in general meeting	Generally by members by resolution
DIN and consent required	Special notice required
Eligibility requirements apply	Opportunity of being heard
Additional/alternate/nominee directors may be appointed under Section 161	Office may also become vacant under Section 167

31. Important Sections for Examination

Section	**Subject**
149	Board of Directors
152	Appointment of directors
161	Additional, alternate and nominee directors
164	Disqualifications
166	Duties of directors
167	Vacation of office
168	Resignation
169	Removal
170	Register of directors and KMP
184	Disclosure of interest

32. Exam Diagram

Draw this:

DIRECTORS

↓

APPOINTMENT

Section 152

↓

QUALIFICATION / DIN

Sections 149, 152, 164

↓

DUTIES

Section 166

↓

Good faith + Care + Skill + Independent Judgment

↓

LIABILITY

Civil + Criminal + Statutory

↓

REMOVAL

Section 169

33. Conclusion

Directors are the central decision-makers in corporate management. The Companies Act, 2013 provides detailed provisions concerning their **appointment, qualifications, disqualifications, duties, resignation and removal**.

The law imposes fiduciary and statutory obligations on directors so that corporate powers are exercised honestly, carefully and for proper purposes.

⭐ **Best LL.M. conclusion:**

"Directors occupy a position of trust and responsibility in corporate administration. The Companies Act, 2013 therefore balances their managerial powers with statutory duties, fiduciary obligations and personal liability for misconduct. The ultimate objective is to ensure responsible corporate governance and protection of the interests of the company and its stakeholders."

🔥 **2-Minute Revision**

Appointment

149 → Board

152 → Appointment

161 → Additional / Alternate / Nominee

Removal

169 → Removal

Disqualification

164 → Disqualification

Duties

166 → Duties

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Vacation
167 → Vacation
Resignation
168 → Resignation
Disclosure
184 → Interest
Golden line:
"Directors manage the company, but their powers are fiduciary and statutory; they must act in good faith, with due care, skill and independent judgment, and must avoid conflicts and undue gains."
2024 — QUESTION 5
What do you mean by Liquidation? Explain the Effects of Liquidation Proceedings on the Company, Members, Creditors and Workers.
1. Introduction
Liquidation is the process by which the affairs of a company are brought to an end, its assets are realised, its liabilities are paid according to the applicable priority, and the remaining assets, if any, are distributed among those entitled to them, followed by dissolution of the company.
In simple words:
Liquidation = Realisation of assets + payment of liabilities + distribution of surplus + dissolution.
For a current-law answer, it is important to distinguish **winding up under the Companies Act, 2013** from **liquidation under the Insolvency and Bankruptcy Code, 2016 (IBC)**. The IBC now provides the principal framework for liquidation of insolvent corporate persons, while the Companies Act retains Tribunal winding-up provisions for specified grounds.
2. Meaning of Liquidation
Liquidation is the process through which a company's business and legal affairs are wound up.
The liquidator takes control of the company's assets and affairs, realises the assets and applies the proceeds towards the company's liabilities according to law.
The ultimate object is:
To bring the company's existence to an end in an orderly manner.
3. Difference Between Liquidation, Winding Up and Dissolution
These terms should not be treated as identical.
Winding Up
The **process** by which the company's affairs are brought to an end.
Liquidation
The process of collecting and realising assets and distributing the proceeds.
Dissolution
The **final termination of the company's legal existence**.
Easy formula:

Winding up → Liquidation → Dissolution

4. Appointment of Liquidator

When liquidation takes place, a **liquidator** is appointed in accordance with the applicable law.

The liquidator's principal responsibilities include:

- taking custody/control of assets;
- identifying liabilities;
- verifying claims;
- selling or realising assets;
- distributing proceeds according to statutory priority;
- completing the liquidation process.

5. Effects on the Company

A. Business Comes to an End

The company normally ceases carrying on its ordinary business, except to the extent necessary for beneficial winding up/liquidation.

The object is no longer to carry on normal commercial operations but to complete the liquidation process.

B. Management Powers Are Affected

The powers of the Board and management are substantially displaced or restricted according to the applicable liquidation regime.

The liquidator assumes control over the company's affairs and assets to the extent provided by law.

C. Assets Come Under Liquidator's Control

The liquidator takes custody or control of the company's assets.

These may include:

- land and buildings;
- machinery;
- investments;
- inventory;
- receivables;
- intellectual property;
- bank balances.

D. Company Continues Until Dissolution

A very important point:

Liquidation does not immediately mean that the company ceases to exist.

The company continues as a legal entity until the final dissolution order/effect under the applicable law.

It exists principally for the purpose of completing liquidation.

6. Effects on Members

A. Members Lose Ordinary Control

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Members cannot ordinarily continue to exercise normal management powers merely because they continue to hold shares.

The liquidator controls the liquidation process.

B. Liability of Members

In a company limited by shares, members are generally liable only to the extent of the **unpaid amount on their shares**, subject to applicable law.

Example:

A holds shares worth ₹1,00,000.

He has already paid ₹80,000.

Unpaid amount = **₹20,000**

His contribution liability may extend to the unpaid amount, subject to the statutory framework.

C. Members May Receive Surplus

If, after payment of:

- liquidation expenses;
- creditors;
- statutory dues;
- other liabilities,

a surplus remains, it may ultimately be distributed among members according to their rights.

Therefore:

Members receive only after prior claims have been satisfied according to law.

7. Effects on Creditors

Creditors are among the most important stakeholders in liquidation.

A. Claims Are Lodged and Verified

Creditors submit their claims to the liquidator in the prescribed manner.

The liquidator verifies:

- amount claimed;
- supporting documents;
- security;
- priority;
- validity of the claim.

B. Secured Creditors

A secured creditor has security over particular assets.

Depending upon the applicable liquidation framework, a secured creditor may:

- relinquish security and participate in distribution; or
- realise security in accordance with law.

Under the IBC, these rights are specifically dealt with under **Section 52**.

8. Priority of Payment

Under the IBC liquidation framework, **Section 53** provides the statutory waterfall for distribution of liquidation proceeds.

Broadly, the order includes:

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1. insolvency resolution process costs and liquidation costs;
2. specified workmen's dues and secured creditors in the manner provided;
3. employees' dues other than workmen;
4. unsecured financial creditors;
5. government dues and certain unpaid secured amounts;
6. remaining debts and dues;
7. preference shareholders;
8. equity shareholders/partners.

The exact application depends upon the statutory provisions and circumstances.

Important examination point:

Shareholders are at the bottom of the liquidation waterfall.

9. Effects on Workers/Employees

Liquidation can have serious consequences for employees and workers.

A. Employment May Come to an End

Where the company's business is discontinued, employment may terminate subject to applicable labour law and the liquidation framework.

B. Unpaid Wages and Dues

Workers and employees may have claims for:

- unpaid wages;
- salary;
- other employment-related dues.

The priority of such claims is determined by the applicable statutory framework.

C. Workmen's Dues

Under **Section 53 of the IBC**, workmen's dues for the specified period receive priority along with the claims of secured creditors who have relinquished security, subject to the statutory provisions.

This demonstrates the law's concern for employee protection.

10. Effects on Company Property

The company's property is utilised for satisfying lawful claims.

The liquidator may:

- take possession;
- preserve assets;
- sell assets;
- collect receivables;
- recover money;
- distribute proceeds.

The purpose is to maximise realisation for stakeholders.

11. Effects on Directors

Directors do not ordinarily continue to exercise unrestricted managerial powers once liquidation is underway.

They are required to:

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- cooperate with the liquidator;
- provide books and records;
- provide information;
- assist in identifying assets and liabilities;
- comply with lawful directions.

Failure to cooperate can result in statutory consequences.

12. Effects on Pending Proceedings

Liquidation can affect pending legal proceedings involving the company.

The liquidator generally represents the company in matters connected with the liquidation, subject to the applicable statutory framework and permission requirements.

Under the IBC, **Section 33(5)** contains restrictions on institution or continuation of suits or legal proceedings by or against a corporate debtor after a liquidation order, subject to statutory exceptions and the Adjudicating Authority's permission.

13. Effects on Contracts

Contracts entered into by the company may be:

- continued;
- terminated;
- assigned;
- repudiated/rejected,

depending on the applicable law, contractual terms and circumstances.

The liquidator determines what action is appropriate for maximising the value of the liquidation estate.

14. Effects on Share Capital

The company's share capital becomes relevant primarily for determining the rights of members in the distribution of any surplus.

Equity shareholders rank **after creditors and preference shareholders** in the liquidation waterfall.

Therefore, shareholders may receive nothing if the company's assets are insufficient to satisfy prior claims.

15. Effects on Creditors — Simple Example

Suppose a company has assets worth:

₹10 crore

Its claims are:

- liquidation costs — ₹1 crore
- secured/unsecured creditors and other priority claims — ₹8 crore
- preference shareholders — ₹1 crore
- equity shareholders — ₹5 crore

Only ₹10 crore is available.

The claims are satisfied according to the statutory waterfall.

If nothing remains after higher-priority claims:

Equity shareholders receive nothing.

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This illustrates the principle of **priority in liquidation**.

16. Liquidation Estate

Under the IBC, the liquidator forms a **liquidation estate** consisting of assets that are available for liquidation, subject to statutory exclusions.

The estate is realised and distributed in accordance with the Code.

17. Main Effects — At a Glance

Stakeholder	Effect of Liquidation
Company	Business brought to an end; assets realised; eventually dissolved
Directors	Management powers restricted/displaced; must cooperate
Members	Liability according to unpaid share/guarantee; receive surplus only after prior claims
Creditors	Claims verified and paid according to statutory priority
Secured creditors	Rights governed by applicable security/liquidation provisions
Workers	Employment may end; statutory priority applies to specified dues
Employees	Claims for unpaid salary/dues dealt with according to law
Liquidator	Takes control and administers liquidation

18. Important Provisions for Current Law

Companies Act, 2013

- **Section 270** — modes of winding up under the Companies Act framework
- **Sections 271 onwards** — Tribunal winding-up provisions
- **Section 302** — dissolution in Tribunal winding-up framework

Insolvency and Bankruptcy Code, 2016

- **Section 33** — initiation of liquidation
- **Section 35** — powers and duties of liquidator
- **Section 52** — secured creditor in liquidation
- **Section 53** — distribution of assets
- **Section 54** — dissolution of corporate debtor

19. Difference Between Old Winding-Up Framework and Current IBC

This is an excellent point to add in an LL.M. answer.

Earlier position

Company winding up was principally dealt with under the Companies Act framework.

Current position

For an **insolvent corporate debtor**, liquidation generally follows the **IBC framework** after the circumstances specified under the Code arise.

Thus:

Companies Act → corporate law framework

IBC → insolvency and liquidation framework

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20. Examination Diagram

Draw this:

LIQUIDATION ORDER / COMMENCEMENT

↓

LIQUIDATOR

↓

Take control of assets

↓

Verify claims

↓

Realise assets

↓

LIQUIDATION PROCEEDS

↓

Statutory Waterfall — Section 53 IBC

↓

Creditors / Employees / Other Stakeholders

↓

Preference Shareholders

↓

Equity Shareholders

↓

DISSOLUTION

21. Importance of Liquidation

Liquidation serves several purposes:

1. Orderly closure

It prevents chaotic termination of a company.

2. Protection of creditors

Creditors receive payment according to statutory priority.

3. Protection of employees

Workers' and employees' dues receive statutory treatment.

4. Prevention of asset dissipation

The liquidator takes control of assets.

5. Fair distribution

The statutory waterfall determines distribution.

6. Final dissolution

After completion, the company's legal existence is brought to an end.

22. Conclusion

Liquidation is an organised statutory process through which the company's assets are collected and realised, liabilities are determined and discharged according to law, and the remaining surplus is distributed among those entitled to it.

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The effects of liquidation extend to **the company, members, creditors, employees and workers**. The modern Indian framework places particular importance on creditor protection and orderly distribution through the IBC.

⭐ **Best LL.M. conclusion:**

"Liquidation is not merely the closure of a business; it is a legally regulated process for the orderly realisation and distribution of corporate assets. It balances the interests of creditors, employees, members and other stakeholders and ultimately culminates in the dissolution of the corporate entity."

🔥 **2-Minute Revision**

Liquidation =

Assets → Claims → Realisation → Distribution → Dissolution

Effects:

Company → business ends, assets realised

Members → limited liability; surplus only after prior claims

Creditors → claims verified and paid according to priority

Workers → employment may end; specified dues receive statutory priority

Directors → management powers restricted; must cooperate

⭐ **Most important current-law sections:**

IBC 33 → Liquidation

IBC 35 → Liquidator's powers

IBC 52 → Secured creditors

IBC 53 → Distribution waterfall

IBC 54 → Dissolution

2019 — QUESTION 7

Who is a Public Trustee? How is he appointed? Discuss his functions.

⚠️ **Important current-law note**

This is a **historical Company Law question** based on the **Companies Act, 1956**. The office of Public Trustee under **Section 153A** was rendered inoperative by the Companies (Amendment) Act, 2000. Therefore, for your LL.M. examination, you should answer it according to the historical syllabus, while mentioning the present legal position at the end.

1. Meaning of Public Trustee

A **Public Trustee** was a person appointed by the **Central Government** to exercise certain statutory powers concerning **shares and debentures held in trust**.

The office was intended to protect the interests of beneficiaries where shares or debentures of a company were held by a trustee.

Under the old Section 153A, the Central Government could appoint a person as Public Trustee by notification in the **Official Gazette**.

2. Statutory Basis

The relevant provisions under the Companies Act, 1956 included:

- **Section 153** — Trusts not to be entered on register

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- **Section 153A** — Appointment of Public Trustee
- **Section 153B** — Declaration regarding shares/debentures held in trust
- **Section 187B** — Exercise of voting rights in respect of shares held in trust

The **Companies (Public Trustee) Rules, 1973** dealt with the method of appointment, powers, functions and conditions of service of the Public Trustee.

3. Appointment of Public Trustee

Under the old **Section 153A**, the Central Government could appoint a Public Trustee by notification in the Official Gazette.

Under the **Companies (Public Trustee) Rules, 1973**, appointment was made by deputation of:

- a State Judicial Officer of the rank of **District and Sessions Judge**, or
- an officer of the Central or State Government eligible for appointment as **Joint Secretary to the Government of India** or equivalent,

with the prescribed experience/knowledge in areas such as:

- law;
- accounts;
- income-tax;
- industrial development;
- corporate-sector working; or
- administration.

Consultation with the **Union Public Service Commission** was required where applicable.

4. Why Was the Public Trustee Necessary?

The Public Trustee was introduced to protect beneficiaries where shares or debentures were held in trust.

The main concern was that a trustee, although registered as holder, was holding the securities **for the benefit of another person**.

The law therefore created a mechanism through which the Public Trustee could exercise certain rights where necessary to protect the interests of the beneficiaries.

5. Declaration by Trustee — Section 153B

Where shares or debentures were held in trust, the trustee was required to make a prescribed declaration to the Public Trustee, subject to the statutory conditions and exemptions.

A copy of the declaration was also required to be sent to the company.

The declaration provided information about the trust and the securities held.

6. Functions and Powers of Public Trustee

A. Exercise of Voting Rights

One of the most important functions was the exercise of voting rights attached to shares held in trust.

Under the old **Section 187B**, the voting rights and related powers ordinarily exercisable by the trustee could become exercisable by the Public Trustee.

7. Attend Company Meetings

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The Public Trustee could attend:

- general meetings;
- meetings of a class of members;
- other relevant meetings,

and exercise the rights and powers attached to the shares in accordance with the statutory framework.

8. Appointment of Proxy

The Public Trustee could appoint:

- an officer of Government; or
- the trustee himself,

as his proxy to attend the meeting and exercise the relevant rights according to his directions.

9. Protection of Beneficiaries

The central purpose of the Public Trustee was:

To safeguard the objects of the trust and the interests of the beneficiaries.

The Public Trustee could exercise the relevant powers where he considered that the interests of the beneficiaries required protection.

10. Power to Abstain

The Public Trustee was not required to exercise his powers in every situation.

He could **abstain from exercising the rights and powers** if, in his opinion:

the objects of the trust or interests of the beneficiaries were not likely to be adversely affected.

This was an important discretionary power.

11. Trustee Could Give His Views

If the trustee believed that the Public Trustee should exercise the relevant rights to protect the trust or beneficiaries, the trustee could communicate his views in writing.

The Public Trustee could then:

- accept the trustee's views; or
- reject them.

The final decision remained with the Public Trustee under the statutory framework.

12. Inspection of Books and Papers

The Public Trustee was entitled to receive and inspect books and papers which a member was entitled to receive and inspect.

This helped the Public Trustee properly exercise the statutory rights attached to the securities.

13. Protection from Legal Proceedings

The old Section 187B provided protection against suits, prosecutions or other proceedings merely because the Public Trustee had abstained from exercising the statutory rights.

This protected the Public Trustee's statutory discretion.

14. Main Functions — Summary

Remember the Public Trustee's functions as:

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D-V-P-I-P

D → Declaration from trustee

V → Voting rights

P → Protect beneficiaries

I → Inspect books and papers

P → Proxy/participation in meetings

15. Public Trustee vs Ordinary Trustee

Public Trustee	**Ordinary Trustee**
Government-appointed statutory officer	Private/appointed trustee
Acts under company-law provisions	Acts under trust instrument and applicable trust law
Protects beneficiaries in specified corporate trust situations	Administers trust property generally
Can exercise statutory rights relating to shares/debentures	Normally exercises rights according to trust
Has statutory powers	Powers depend on trust law/instrument

16. Example

Suppose **X** holds shares in ABC Ltd. as trustee for several beneficiaries.

The shares carry voting rights.

Under the old statutory framework, the Public Trustee could exercise the relevant voting powers where the law applied and where intervention was necessary to protect the beneficiaries.

The Public Trustee could also inspect relevant company documents and attend meetings or appoint a proxy.

17. Important Case Principle

A useful case to understand the operation of these provisions is:

New Bank of India Ltd. v. Union of India

The case discussed the statutory framework concerning shares held in trust and the role of the Public Trustee in relation to voting rights.

The court recognised that Section 187B transferred the relevant voting rights from the trustee to the Public Trustee under the statutory conditions.

18. Current Legal Position

This is **very important for your 2024 LL.M. preparation**.

The Public Trustee provisions referred to in this question belong to the **Companies Act, 1956**.

Section 153A itself expressly states that it ceased to apply after commencement of the **Companies (Amendment) Act, 2000**.

Similarly, the relevant Section 187B framework was also made inapplicable from the commencement of the 2000 amendment.

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Therefore:

The Public Trustee under the old Companies Act, 1956 should be treated as a historical syllabus topic, not as a current Companies Act, 2013 office.

19. Examination Diagram

Draw this:

SHARES / DEBENTURES HELD IN TRUST

↓

TRUSTEE

↓

DECLARATION

↓

PUBLIC TRUSTEE

↓

Protect Beneficiaries

↓

Voting Rights

↓

Attend Meeting / Proxy

↓

Inspect Books & Papers

↓

Safeguard Trust Interests

20. Conclusion

The Public Trustee was a statutory mechanism introduced under the Companies Act, 1956 to protect beneficiaries where shares or debentures were held in trust. The Public Trustee could exercise specified rights, particularly voting rights, and inspect relevant corporate records.

However, the relevant provisions were subsequently rendered inoperative by the **Companies (Amendment) Act, 2000**.

⭐ **Best LL.M. conclusion:**

"The Public Trustee was intended to act as a statutory safeguard for beneficiaries of trusts involving corporate securities. His principal functions included exercising voting rights, attending meetings, appointing proxies and inspecting relevant corporate records. Although the office formed part of the Companies Act, 1956 framework, the relevant provisions ceased to operate after the Companies (Amendment) Act, 2000."

🔥 **2-Minute Revision**

Public Trustee — Old Companies Act, 1956

Section 153A → Appointment

Section 153B → Declaration by trustee

Section 187B → Voting rights

Functions:

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1. **Protect beneficiaries**
2. **Exercise voting rights**
3. **Attend meetings**
4. **Appoint proxy**
5. **Inspect books and papers**
6. **Exercise discretion to abstain**

⭐ **Most important current-law point:**

Public Trustee provisions are historical; Sections 153A and 187B were made inapplicable after the Companies (Amendment) Act, 2000

2017 — QUESTION 5

Explain the Compounding of Offences under Company Law

1. Introduction

Compounding of an offence means settling a statutory offence by payment of a prescribed amount, instead of continuing with criminal prosecution, where the law permits such settlement.

Under the **Companies Act, 2013, Section 441** deals with compounding of certain offences. The provision allows eligible offences to be compounded either **before or after prosecution has been instituted**.

In simple words:

Compounding = Settlement of a compoundable company-law offence by payment of a specified amount, subject to statutory approval.

2. Object of Compounding

The main objects are:

- to avoid unnecessary criminal litigation;
- to provide speedy settlement of defaults;
- to reduce the burden on courts;
- to encourage companies to rectify statutory defaults;
- to secure payment of the prescribed compounding amount to the Government.

3. Statutory Provision — Section 441

Section **441 of the Companies Act, 2013** provides the legal framework for compounding of offences.

The provision applies to offences punishable under the Companies Act that are legally capable of being compounded.

4. Which Offences Can Be Compounded?

Under the current Section 441 framework, an offence is generally compoundable where it is **not punishable with imprisonment only or with imprisonment as well as fine**.

Therefore, for examination purposes:

Generally compoundable

Fine-only offences

Generally not compoundable under Section 441

Imprisonment-only offences
and
Imprisonment + fine offences

5. Authority for Compounding

Section 441 provides for compounding by the appropriate authority.

A. Tribunal

The **National Company Law Tribunal (NCLT)** can compound offences within its statutory jurisdiction.

B. Regional Director

Where the maximum fine falls within the statutory monetary limit prescribed by Section 441, the **Regional Director or an officer authorised by the Central Government** may compound the offence.

Important current figure

The present statutory threshold is **₹25 lakh** for the Regional Director/authorised officer under Section 441(1)(b).

Note: Older textbooks may mention ₹5 lakh because the provision has been amended. For a current-law answer, use **₹25 lakh**.

6. Application for Compounding

The application is made to the **Registrar of Companies (ROC)**.

The Registrar considers the matter and forwards the application, together with his comments, to the appropriate authority.

Flow:

Company / Officer
↓
Application to ROC
↓
ROC's comments
↓
NCLT / Regional Director
↓
Compounding order

7. Compounding Before Prosecution

An offence may be compounded **before prosecution is instituted**, if it is legally compoundable.

Once the offence is properly compounded, prosecution for that offence cannot subsequently be instituted against the person in respect of whom it has been compounded.

8. Compounding After Prosecution

Compounding is also possible **after prosecution has already been instituted**, where the offence is compoundable.

After the offence is compounded:

- the Registrar informs the court;

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- the compounding is brought to the court's notice;
- the company/officer concerned is discharged in respect of that offence.

9. Payment of Compounding Amount

The company or officer must pay or credit the amount specified by the competent authority to the Central Government.

The amount cannot exceed the maximum fine prescribed for the offence.

10. Investigation Pending — Important Restriction

An offence covered by Section 441 cannot be compounded where an **investigation against the company has been initiated or is pending**, subject to the statutory provisions.

This prevents a company from using compounding to obstruct a serious statutory investigation.

11. Repeated Offence

Section 441 also contains restrictions concerning repeated offences.

A similar offence committed within **three years** from the date on which the previous similar offence was compounded cannot ordinarily be compounded under the same provision.

If the subsequent offence occurs after the expiry of three years, it is treated as a first offence for this purpose.

12. Filing of Pending Documents

Where the offence relates to failure to:

- file a return;
- file an account;
- register a document;
- deliver/send a document to the ROC,

the competent authority may direct the company or its officer/employee to complete the required filing within a specified time.

This is important because:

Compounding should normally go together with rectification of the underlying default.

13. Consequence of Failure to Comply with Order

If an officer or employee fails to comply with an order relating to filing or registration of documents, statutory punishment may follow under Section 441.

Therefore, obtaining a compounding order does not mean that the company can ignore the underlying compliance requirement.

14. Effect of Compounding

Once an offence is validly compounded:

1. Criminal prosecution is avoided or terminated

depending upon whether compounding occurred before or after prosecution.

2. The default is settled

The offender pays the specified compounding amount.

3. The matter is brought to an end

No further prosecution can ordinarily be initiated for the same compounded offence.

15. Compounding vs Payment of Additional Filing Fee

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These should **not be confused**.

Additional fee

May be payable for delayed filing under the Companies Act.

Compounding

Deals with a **statutory offence** that has become compoundable.

Payment of an additional filing fee does not automatically mean that every offence has been compounded.

16. Compounding vs Acquittal

Compounding

The offender settles the offence according to the statutory mechanism.

Acquittal

The court finds the accused not guilty.

Therefore:

Compounding is a statutory settlement; acquittal is a judicial finding of not guilty.

17. Compounding vs Prosecution

Compounding	**Prosecution**
Settlement mechanism	Criminal proceeding
Payment of specified amount	Case proceeds before court
Available only for compoundable offences	Applies according to offence and law
Faster resolution	Usually more time-consuming
May occur before or after prosecution	Formal criminal proceeding
Ends the matter in accordance with Section 441	Ends by judgment/order

18. Role of ROC

The **Registrar of Companies** plays an important procedural role.

The ROC:

- receives the compounding application;
- examines the default;
- provides comments;
- forwards the application to the competent authority;
- receives information about the compounding order;
- updates the company's statutory records where appropriate.

19. Example

Suppose ABC Ltd. commits a **compoundable offence** by failing to comply with a statutory requirement.

Instead of allowing the matter to proceed through prolonged prosecution, the company may:

1. rectify the underlying default;
2. apply for compounding through the ROC;
3. pay the prescribed amount;

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4. obtain the compounding order.

If the offence has already been prosecuted, the order is brought to the court's notice and the company/officer is discharged in relation to the compounded offence.

20. Important Sections to Remember

Section 441

Compounding of certain offences

Related provisions:

- **Section 403** — additional fee in certain cases
- **Section 435** — Special Courts
- **Section 436** — offences triable by Special Courts
- **Section 447** — fraud
- **Section 448** — false statement
- **Section 449** — false evidence

21. Examination Diagram

Draw this:

COMPANY / OFFICER COMMITS COMPOUNDABLE OFFENCE

↓

RECTIFY DEFAULT

↓

APPLICATION TO ROC

↓

ROC'S COMMENTS

↓

NCLT / REGIONAL DIRECTOR

↓

PAY COMPOUNDING AMOUNT

↓

COMPOUNDING ORDER

↓

PROSECUTION AVOIDED / DISCHARGED

22. Important Current-Law Point

For your LL.M. exam, remember this amendment history:

Earlier versions of Section 441 contained different monetary limits and wording. The provision has subsequently been amended, including the increase of the Regional Director's monetary threshold to **₹25 lakh**.

Therefore, **do not blindly reproduce an old ₹5 lakh figure from older textbooks** when writing the current-law portion.

23. Conclusion

Compounding is an important mechanism under company law for resolving eligible statutory offences without prolonged criminal litigation. Section 441 provides a structured process

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involving the **ROC, Regional Director and NCLT**, depending upon the nature and monetary limit of the offence.

It promotes:

- speedy justice;
- corporate compliance;
- reduction of litigation;
- efficient enforcement of company law.

⭐ **Best LL.M. conclusion**

"Compounding under Section 441 is a statutory mechanism for settling eligible offences under the Companies Act by payment of a prescribed amount. It provides a balance between enforcement and efficient corporate compliance by allowing appropriate offences to be resolved without prolonged criminal prosecution."

🔥 **2-Minute Revision**

Remember:

Section 441 = Compounding

Application → ROC

Fine within prescribed limit → Regional Director/authorised officer

Otherwise → NCLT, as applicable

Imprisonment-only / imprisonment + fine → generally not compoundable under Section 441

Investigation initiated/pending → compounding restricted

Before prosecution → no prosecution after valid compounding

After prosecution → discharge after compounding is brought to court's notice

⭐ **Golden line:**

"Compounding is not an acquittal; it is a statutory settlement of a compoundable offence upon payment of the amount determined by the competent authority."

Companies Fresh Start Scheme, 2020 (CFSS-2020)

1. Introduction

The **Companies Fresh Start Scheme, 2020 (CFSS-2020)** was introduced by the **Ministry of Corporate Affairs (MCA)** during the COVID-19 pandemic through **General Circular No. 12/2020 dated 30 March 2020**.

Its purpose was to give defaulting companies an opportunity to **regularise delayed statutory filings under the Companies Act, 2013** and make a "fresh start" as compliant companies.

In simple words:

CFSS 2020 = File pending documents + waive additional filing fees + obtain immunity for eligible filing-related defaults.

2. Why Was CFSS Introduced?

During COVID-19, many companies could not comply with their statutory filing requirements.

Companies had accumulated defaults relating to:

- Annual Returns
- Financial Statements
- Various forms
- Statements
- Returns
- Other documents required to be filed with the ROC

The MCA therefore wanted companies to become compliant instead of immediately facing prosecution and penalties for delayed filing.

3. Legal Basis

CFSS-2020 was introduced under the powers of the Central Government under the **Companies Act, 2013**, particularly the framework relating to additional fees and condonation/immunity.

It was notified through:

General Circular No. 12/2020 dated 30 March 2020.

4. Period of the Scheme

Originally:

1 April 2020 to 30 September 2020

However, due to the continuing COVID-19 disruption, the MCA extended the scheme.

The final period was:

1 April 2020 to 31 December 2020.

The MCA officially confirmed that the scheme ended on **31 December 2020**.

⭐ **Important**

CFSS 2020 is NOT currently available.

It was a **temporary, one-time scheme**.

5. Who Could Benefit?

The scheme was available to **defaulting companies** that had failed to file documents within the prescribed time.

It covered companies incorporated under the Companies Act, 2013, including companies having long-standing filing defaults.

The scheme was designed to cover defaults **irrespective of the duration of the default**.

6. What Benefit Was Given?

The biggest benefit was:

Waiver of Additional Filing Fees

Normally, delayed filing attracts additional fees.

During CFSS:

Only normal filing fees were payable; additional fees for eligible delayed filings were waived.

Example

Suppose a company had to file a document on:

1 July 2018

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but had not filed it until 2020.

Normally, substantial additional filing fees could arise.

Under CFSS, if the filing qualified under the scheme:

The company could file it by paying the normal prescribed fee without the additional fee.

7. Immunity from Prosecution

This was another major benefit.

The scheme provided **immunity from prosecution and proceedings for imposition of penalty arising from the delay in filing eligible documents**.

But remember:

The immunity was **limited**.

It did **not** give immunity for the underlying substantive violation of company law.

8. Very Important Limitation

CFSS did NOT mean:

"All offences of the company are forgiven."

Instead:

Immunity was limited to the default/delay associated with filing the documents covered by the scheme.

For example, if a company filed a return late, CFSS could protect against consequences arising from that **delay**.

But if the company had committed an independent fraud or substantive violation, CFSS did not provide immunity for that.

9. Procedure Under CFSS 2020

The basic procedure was:

Step 1

Identify pending statutory filings.

↓

Step 2

File the belated documents during the scheme period.

↓

Step 3

Pay **normal filing fees**.

↓

Step 4

No additional fee for eligible delayed filings.

↓

Step 5

After closure of the scheme, apply electronically for immunity in **Form CFSS-2020**.

↓

Step 6

Obtain immunity certificate/order from the designated authority.

10. Form CFSS-2020

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An important examination point is that the company had to apply for immunity using **Form CFSS-2020** after filing the belated documents.

The MCA FAQ stated that the form was to be filed after the scheme closed and after the belated documents had been taken on record/approved.

The application period was subsequently available up to **30 June 2021**.

11. What Documents Were Covered?

The scheme covered various belated documents required to be filed with the MCA-21 registry, including:

- Annual Returns;
- Financial Statements;
- various statutory forms;
- statements;
- returns;
- other prescribed documents.

The exact exclusions had to be checked against the scheme.

12. Documents/Matters Excluded

CFSS did **not** provide blanket relief for every filing or every statutory violation.

Certain matters/forms were excluded under the scheme.

Most importantly:

It did not protect substantive violations of law.

This distinction is very important for an LL.M. answer.

13. Benefit to Inactive Companies

CFSS also gave inactive companies an opportunity to consider becoming **dormant companies under Section 455 of the Companies Act, 2013**, subject to the statutory requirements.

This was useful for companies that were not carrying on business but wanted to remain legally registered with reduced compliance requirements.

14. Did CFSS Cure Director Disqualification?

No.

This is an important point from the MCA FAQ.

CFSS **did not cure the disqualification of a director**.

Therefore:

CFSS = filing-default relief

not

CFSS = removal of director disqualification.

15. Struck-Off Companies

A company that had already been struck off could not simply use CFSS as though it remained active.

The MCA FAQ indicated that a struck-off company could approach the **NCLT for revival** and, after revival, file the belated documents under the scheme where applicable.

16. Effect on Prosecution

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Suppose:

Company failed to file Annual Return

↓

Default occurred

↓

Company files the delayed return under CFSS

↓

Pays normal fee

↓

Applies for immunity

↓

Eligible prosecution/penalty proceedings arising from the filing delay receive immunity.

But:

Independent fraud/substantive violation

↓

❌ **No CFSS immunity**

17. CFSS 2020 vs CLSS 2000

This comparison is **very useful for your exam**.

CLSS 2000	**CFSS 2020**
Companies Act, 1956	Companies Act, 2013
Year 2000	Year 2020
Historical settlement scheme	COVID-era fresh-start scheme
Filing-default regularisation	Filing-default regularisation
Immunity for eligible defaults	Immunity for eligible filing-related defaults
Temporary	Temporary
No longer operative	No longer operative
ROC/company law framework of 1956	MCA-21/Companies Act, 2013 framework

Golden comparison:

CLSS 2000 was the old Companies Act, 1956 settlement mechanism; CFSS 2020 was a temporary COVID-era compliance scheme under the Companies Act, 2013.

18. CFSS 2020 vs Compounding under Section 441

Don't confuse these two.

CFSS 2020

Special **temporary scheme** for delayed statutory filings.

Section 441

Permanent statutory **compounding mechanism** for eligible offences.

CFSS	**Section 441**
Special scheme	General statutory mechanism

CFSS	Section 441
Temporary	Continuing statutory provision
COVID-19 relief	Offence settlement
Focus on filing defaults	Compoundable offences
Waiver of additional filing fees + immunity	Payment of compounding amount

19. Importance of CFSS 2020

The scheme was highly successful.

According to Government figures, **4,73,131 Indian companies and 1,065 foreign companies** benefited from CFSS 2020.

It therefore achieved its major objective of bringing a large number of companies back into statutory compliance.

20. Current Legal Position — VERY IMPORTANT

❌ **CFSS 2020 does not exist today.**

The scheme:

Started: 1 April 2020

Final expiry: 31 December 2020

Status today: Expired / no longer applicable

The Government expressly stated in March 2021 that both CFSS and the LLP Settlement Scheme had **ended on 31 December 2020**.

Therefore, if you have a company with a current filing default, you **cannot presently file under CFSS 2020**.

21. Examination Diagram

Draw this:

STATUTORY FILING DEFAULT

↓

CFSS 2020

↓

File pending documents

↓

Pay NORMAL filing fee

↓

Additional fee waived

↓

Apply Form CFSS-2020

↓

IMMUNITY

↓

Company becomes compliant

22. Conclusion

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The **Companies Fresh Start Scheme, 2020** was a temporary compliance-relief measure introduced during COVID-19 to help defaulting companies regularise their pending statutory filings.

It provided:

1. **Waiver of additional filing fees**
2. **Opportunity to file belated documents**
3. **Immunity from prosecution/penalty proceedings arising from eligible filing delays**
4. **Opportunity for inactive companies to consider dormant status**

However, the immunity was **not applicable to substantive violations of company law**, and the scheme itself **expired on 31 December 2020**.

⭐ **Best LL.M. conclusion:**

"CFSS-2020 was a one-time regulatory relief measure designed to convert filing defaults into compliance opportunities. Unlike a general amnesty for all corporate offences, its immunity was confined to eligible consequences arising from delayed filings. The scheme ended on 31 December 2020 and therefore has only historical significance today."

🔥 **1-Minute Revision**

CFSS 2020

➡️ MCA **Circular No. 12/2020**
➡️ COVID-19 relief
➡️ **1 April 2020 – 31 December 2020**
➡️ File belated documents
➡️ **Normal fee only**
➡️ **Additional fee waived**
➡️ Apply **Form CFSS-2020**
➡️ Immunity for eligible filing-delay prosecution/penalty
➡️ **No immunity for substantive violations**
➡️ **Expired — not available today**

the Company Law Settlement Scheme, 2000 is no longer in force.

<u>Companies Compliance Facilitation Scheme, 2026 — Complete Explanation</u>

1. What is CCFS-2026?

CCFS-2026 is a **one-time MCA compliance-relief scheme** for companies having pending statutory filings.

Its three main objectives are:

1. **Regularise old ROC filing defaults**
2. **Allow inactive companies to become dormant**
3. **Allow eligible inactive companies to close through strike-off**

The scheme is issued under **Section 460 read with Section 403 of the Companies Act, 2013**.

Simple formula:

Pending filings → pay reduced additional fee → become compliant

or

Inactive company → Dormant status

or

Inactive/defunct company → Strike-off

2. Why MCA introduced it

Companies often accumulate several years of:

- Annual Return defaults
- Financial Statement defaults
- Auditor appointment filings
- Foreign company filings
- Other ROC compliance defaults

The normal additional filing fee can become very large because certain delayed filings attract additional fees calculated on a daily basis.

CCFS-2026 provides a temporary opportunity to clear these backlogs at a substantially reduced cost.

3. The Three Options Under CCFS-2026

This is the **most important part**.

A company can essentially choose one of three routes:

OPTION A

Become fully compliant

OPTION B

Become a Dormant Company

OPTION C

Close the company by Strike-off

OPTION A — REGULARISE PENDING FILINGS

Suppose a company has not filed its:

- MGT-7/MGT-7A
- AOC-4
- ADT-1
- etc.

for several years.

Under CCFS-2026, eligible pending filings can be made by paying:

Normal filing fee + only 10% of the applicable additional fee.

That means approximately:

90% waiver of the additional fee.

Example

Suppose normal additional fee:

₹2,00,000

Under CCFS:

10% = ₹20,000

Saving:

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₹1,80,000

You still pay the **normal filing fee** separately.

4. Which Important Forms Are Covered?

The scheme covers specified annual filings and other specified forms.

Important examples include:

Annual Returns

- **MGT-7**
- **MGT-7A**

Financial Statements

- **AOC-4**
- **AOC-4 CFS**
- specified NBFC/XBRL variants

Auditor

- **ADT-1**

Foreign Companies

- **FC-3**
- **FC-4**

The scheme also covers specified legacy forms under the Companies Act, 1956 in applicable cases.

5. Does it forgive the normal filing fee?

❌ **No.**

This is important.

CCFS does **not** mean:

"File everything free."

Instead:

Normal filing fee

Still payable

Additional fee

Only 10% payable for eligible filings

Therefore:

CCFS = concession on additional fee, not complete fee waiver.

OPTION B — DORMANT COMPANY

This is particularly useful for companies that have **stopped business but don't want to close permanently**.

Under **Section 455 of the Companies Act, 2013**, an eligible company can obtain dormant status.

Under CCFS-2026, the company can apply through:

Form MSC-1

at:

50% of the normal prescribed fee.

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6. When Dormant Status Is Useful

Example:

A company was incorporated in 2018.

It stopped business in 2023.

The promoters don't want to continue business now, but they may restart it in the future.

Instead of maintaining a fully active company:

Apply for Dormant Status

↓

Company remains registered

↓

Reduced compliance burden

↓

Can potentially reactivate later according to law.

Therefore:

Dormant = Keep the company alive but inactive.

OPTION C — STRIKE-OFF

If the company has permanently stopped business and the promoters don't want to continue it, **strike-off** may be appropriate.

Application:

Form STK-2

Under CCFS-2026, the filing fee for eligible strike-off applications is:

25% of the normal filing fee.

That's effectively a:

75% concession.

7. Dormant vs Strike-Off

This is extremely important for your practical company-law work.

Dormant	**Strike-Off**
Company remains registered	Company name removed
Section 455	Section 248
MSC-1	STK-2
Can potentially restart business	Company is being closed
50% of normal fee under CCFS	25% of filing fee under CCFS
Best for temporary inactivity	Best for permanent closure

Easy memory:

MSC-1 = Keep alive

STK-2 = Close

8. Immunity / Protection

CCFS also provides relief from certain consequences arising from eligible filing defaults, subject to the scheme's conditions.

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But be careful:

❌ **It is NOT a blanket amnesty for fraud.**

It does not wipe out:

- fraud;
- substantive violations;
- offences unrelated to the covered filing default;
- other statutory liabilities.

The protection is connected to the specified compliance defaults covered by the scheme.

9. Who Should Consider CCFS-2026?

I would divide companies into **three categories**.

Category A — Active company

Still doing business.

➡️ **Regularise all pending filings.**

Category B — Inactive but may restart

No current business, but promoters want to retain the company.

➡️ **Consider Dormant Status.**

Category C — Completely defunct

No business + no future intention + liabilities appropriately dealt with.

➡️ **Consider STK-2 strike-off**, subject to eligibility.

10. Practical Decision Tree

You can remember this:

Does company have ROC defaults?

↓

YES

Does company want to continue business?

↓

YES

➡️ **Regularise filings**

NO

↓

May company restart in future?

YES

➡️ **Dormant — MSC-1**

NO

➡️ **Strike-off — STK-2**

11. Example — Active Company

ABC Pvt Ltd has not filed:

- AOC-4 for 2022
- AOC-4 for 2023

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- MGT-7 for 2022
- MGT-7 for 2023

Suppose the accumulated additional fees are:

₹3,00,000

Under CCFS:

Additional fee payable:

₹30,000

plus the applicable normal filing fees.

Saving:

₹2,70,000

This is where CCFS can be extremely valuable.

12. Example — Inactive Company

XYZ Pvt Ltd:

- stopped business in 2021;
- has no intention of restarting;
- has old ROC defaults;
- wants to close.

Instead of paying huge accumulated additional fees and continuing indefinitely, the company should examine whether it qualifies for the **CCFS-2026 strike-off route**.

If eligible:

STK-2

↓

25% of normal filing fee under scheme

↓

Strike-off process

This can be substantially cheaper than maintaining the company indefinitely.

13. Current Deadline — VERY IMPORTANT

The original CCFS-2026 period was:

15 April 2026 → 15 July 2026

But MCA subsequently extended it.

Current deadline:

31 AUGUST 2026

The extension was granted through **General Circular No. 03/2026 dated 8 July 2026**, reportedly because of restoration/capacity-enhancement work following the MCA data-centre fire on 5 June 2026.

Today:

25 August 2026

So there are only **6 days remaining**.

If you are considering this for an actual company client, this is something to act on immediately rather than wait.

14. Is CCFS-2026 the Same as CFSS-2020?

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No.

They are similar in concept but different schemes.

CFSS-2020	**CCFS-2026**
COVID-19 scheme	Current 2026 scheme
Expired	Currently extended to 31 Aug 2026
Additional fee relief	Additional fee substantially reduced
Immunity for eligible filing defaults	Relief/immunity subject to current scheme
Mainly compliance reset	Compliance + dormancy + closure
Form CFSS-2020	Current MCA forms/CCFS mechanism

15. CCFS-2026 vs CLSS-2000

You can remember the evolution:

CLSS 2000

Companies Act, 1956

↓

CFSS 2020

Companies Act, 2013 / COVID

↓

CCFS 2026

Modern MCA compliance facilitation

This is a **very good LL.M. answer point** if a question asks about settlement/compliance schemes.

16. Important Practical Point for You as an Advocate

Since you are studying **Administration of Company Law**, this scheme is not merely theoretical.

You can use this knowledge when advising companies with:

- old ROC defaults;
- inactive status;
- director disqualification issues;
- strike-off issues;
- pending annual returns;
- pending financial statements;
- dormant-company options.

A useful client consultation structure:

Step 1 — MCA master data

↓

Step 2 — Identify all pending forms

↓

Step 3 — Calculate normal + additional fees

↓

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Step 4 — Check CCFS eligibility

↓

Step 5 — Decide

Comply / Dormant / Strike-off

↓

Step 6 — File forms

↓

Step 7 — Verify MCA status

17. ⚠ Don't Assume Every Company Is Eligible

Before filing, check:

- company status;
- type of company;
- pending forms;
- nature of default;
- whether the particular form is covered;
- whether any proceedings are pending;
- whether the company is already struck off;
- whether there are outstanding liabilities;
- whether strike-off conditions are satisfied.

CCFS does not automatically cure every company-law problem.

18. One Very Important Distinction

CCFS can help with:

Filing default

but it does not necessarily solve:

Director disqualification

or

Fraud

or

Serious substantive statutory violations

or

Outstanding creditor claims

or

Tax/labour liabilities

Each has to be examined separately.

19. LL.M. Exam Answer — Short Version

If this appears as a current-affairs/company-law question, write:

The Companies Compliance Facilitation Scheme, 2026 was introduced by the Ministry of Corporate Affairs through General Circular No. 01/2026 dated 24 February 2026. The scheme provides a one-time opportunity for eligible companies to regularise specified pending filings by paying the normal filing fee and only 10% of the applicable additional fee. It also facilitates dormant status through MSC-1 at 50% of the normal fee and strike-

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off through STK-2 at 25% of the filing fee. The scheme originally operated from 15 April to 15 July 2026 but was extended to 31 August 2026 through General Circular No. 03/2026. Its objective is to improve corporate compliance, update the MCA registry and facilitate an orderly exit of inactive companies.

⭐ **Your Practical Cheat Sheet**

Situation	**Best route**
Active company + old filings	**CCFS regularisation**
Inactive + may restart	**MSC-1 Dormant**
Permanently closed	**STK-2 Strike-off**
Fraud	❌ CCFS does not cure it
Director disqualification	❌ Not automatically cured
Current deadline	**31 Aug 2026**
Annual filing relief	**Pay only 10% additional fee**
Dormant	**50% normal fee**
Strike-off	**25% normal filing fee**

One correction to my previous answer: I earlier said the deadline had conflicting reports. I have now verified the later MCA extension: **31 August 2026 is the current extended deadline.**

If you have a **specific company with old ROC defaults**, give me its **company name/CIN and the approximate years of non-filing**, and I can explain exactly **whether CCFS-2026, dormant status, or STK-2 is the better route and what forms need to be filed**.

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TOP PRIORITY TO PASS THE EXAM

1. **Rehabilitation of Sick Companies / Sick Industrial Companies**
2. **Official Liquidator — Powers and Duties**
3. **NCLT — Jurisdiction, Powers and Functions**
4. **Registrar of Companies (ROC) — Powers and Functions**
5. **Investigation of Company Affairs**
6. **Winding Up / Liquidation of a Company**
7. **Winding Up of Unregistered and Foreign Companies**
8. **Defunct Companies**
9. **Directors — Appointment, Removal, Duties and Liabilities**
10. **General Meetings — AGM, EGM, Notice, Quorum and Procedure**